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A  
SERIES OF FORMS  
FOR USE IN THE  
PROBATE COURTS OF ALABAMA:

—COMPRISING—

ALL THE FORMS MOST GENERALLY IN USE IN SUCH COURTS, AND SUCH AS  
ARE REQUIRED BY THE PROBATE JUDGE IN THE DISCHARGE OF THE  
CLERICAL DUTIES ATTACHED TO HIS OFFICE, WITH REFERENCES TO  
THE STATUTORY PROVISIONS UNDER WHICH THEY MAY HAVE  
BEEN DRAWN; SOME FEW AND BRIEF EXPLANATORY COM-  
MENTS; THE GENERAL LAWS, RELATING TO THE PROBATE  
COURT, WHICH HAVE BEEN ENACTED SINCE THE CODE  
BECAME OPERATIVE, INCLUDING THOSE PASSED  
AT THE SESSION OF THE GENERAL ASSEMBLY  
HELD IN 1851-2:

ALSO,

THE RULES THAT HAVE BEEN ADOPTED BY, AND WHICH ARE NOW IN FORCE  
IN THE PROBATE COURT OF MOBILE COUNTY; THE ATTORNEY'S FEE BILLS,  
ADOPTED BY THE BAR OF THE COUNTIES OF MOBILE AND MARENGO,  
TOGETHER WITH A FULL INDEX TO THE FORMS:

MAKING A  
COMPLETE MANUAL OF PRACTICE,

ADAPTED TO THE USE OF

JUDGES, ATTORNEYS, EXECUTORS, ADMINISTRATORS AND GUARDIANS,

BY

JOHN A. HITCHCOCK,

PROBATE JUDGE FOR THE COUNTY OF MOBILE.

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Mobile:

FORSYTH & HARRIS, PRINTERS.

1857.

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ENTERED according to the act of Congress, in the office of the Clerk of the District Court of the United States for the Southern District of Alabama, in the year 1857.

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#### ERRATA.

The references at the head of form No. 11, page 29, should be, "1 Ala. R. 380-90; 4 Ala. R. 253."

In the note on page 32, for "**proponent**" read "**opponent**."

On page 37, form No. 19, the title of the case is omitted.

In the fourth line from top of page 119, after the words "served on them," insert the words "ten days before said day appointed for such hearing."

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## PREFACE AND EXPLANATIONS.

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Every Probate Judge and Lawyer throughout the State, must be aware that there is a lamentable confusion and irregularity in the mode of conducting our Probate business. So universally is this the case, that I have no fear of question, when I say, that of the fifty-two Probate Courts of this State, all acting under precisely the same laws, the mode of procedure in no two of them will be found to be the same. Indeed, such is the wide dissimilarity in the practice of most of them, that it is quite probable that an inspection of their records, would be far from producing conviction upon the mind of a stranger, that they originated under, and grew out of the same laws and judicial system. The mind is naturally led to the inquiry, why is this? and the reply to the interrogatory is as promptly suggested, to the lawyer or judge of experience, as the inquiry: It is because no effort has ever been made to adopt, throughout the State, any uniform rules and system of practice for the conduct and management of Probate business; because, in this State, we have had no book of forms, composed with special reference to the constitution of our Courts, and the various proceedings contemplated by our State laws, notwithstanding it must be evident to every Probate Judge, and to every person having business in the Court, that there is no jurisdiction, not even that of a Court of Equity, demanding more variety in its formula or more skill and care in their preparation. Especially is such the case as regards the Orders and Decrees of Court.

A book of forms will measurably supply the want of rules, and the absence of a regular system of practice, inasmuch as no set of forms can be framed and put together, in the order required as each proceeding may advance, without following out, step by step,

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a complete system, progressing regularly from its inception to its close, and clearly indicating the rules of practice proper to be followed in each individual case.

If, therefore, the following forms shall be found acceptable to the bench and the bar of the State, and shall, by their use, tend to evoke order and system out of what has been chaos (for such diversity of procedure can amount to nothing else) hitherto, I shall have accomplished some good, and fulfilled the utmost of my own expectations.

The acts contained in the appendix are so few in number that the author has not thought it worth while to index them. Neither has any notice been taken, in the index, of the rules of practice adopted by the Probate Court of Mobile, or of the Attorney's fee bills, which will be found in this volume. The acts, however, have been published in such connection that those upon the same subject will be found succeeding each other, without regard to date, while the other acts will be found in their order according to date, commencing with the acts of 1851-2.

It will be found, on inspection, that the rules of Court are not arbitrary behests, but merely such directions as have suggested themselves to the mind of the Judge of Probate of Mobile county, as proper for the orderly transaction of the business to which they relate. They have been the result of his experience on the subject; and are included in the book because the author thought that they might, possibly, be serviceable to some other judge, in his endeavors to regulate and systematize the proceedings of his Court.

One of the most perplexing matters which is submitted for the decision of the Probate Judge relates to Attorneys' fees, and it is a question which he is called upon to determine more often than almost any other. The difficulty arises from the fact that there has been no uniform standard by which to measure, or value the services for which compensation is claimed. I have published the fee bills adopted by the Attorneys of Mobile and Marengo counties, for the purpose of aiding the judge in such cases. The fee bill which was adopted in Mobile, was, at the time, and I believe still is, acquiesced in as just, by the entire bar of the county. It is true these fee bills have not the sanction of *lex scripta*, yet they may be aids to decision as to what is right, nevertheless. If they

can not be regarded as law, they are, at least, not the result of the opinions of any one or two lawyers, but the concurring judgment of communities of lawyers, as to what is proper to be charged in the given cases.

In using the forms the draftsman must bear in mind, that matter contained in parenthesis and in italics in the text, is directory,—while matter in parenthesis and printed in roman letter is such as may be required for use in case of any variation from the main text being found necessary.

The author would recommend to those who use the book, that, for the purpose of avoiding all mistakes, they should first consult the table of “Errata,” and note the error, in pencil, on the margin of that portion of the text where the correction is required.

In conclusion, I must say that I am as fully aware as any other person can be, that the book which I am about to send forth is far from being perfect. In publishing it, I am not actuated by any pride of authorship, but stimulated solely by the hope that it may prove of advantage to the jurisdiction of one of the most important Courts in the State, and a labor-saving aid to my brethren of the bench and the bar.

THE AUTHOR.

MOBILE, September 1, 1857.

## INTRODUCTION.

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I do not propose to enter into an elaborate or an extended argument on the subject of the jurisdiction of the Probate Courts of this State; but, it does not seem to me that my book will be at all complete, without a few introductory words, touching the power of the Court, the proper exercise of which, is the sole aim and purpose of every page in it. I am principally impelled to this course, however, by the fact, that I believe the subject has not been a matter of very thoughtful investigation for some years past; and because, if I am correct in the view which I take of the matter, there is much error existing in the general opinion as to the jurisdiction of this Court—error which should be removed.

I believe it to be the generally received opinion, that the Probate Court derives its powers solely from the Code; and that, therefore, being purely a statutory Court, its jurisdiction is circumscribed by the letter of legislative enactment, which must be strictly construed; and that the right to take jurisdiction, in each case where it is exercised, must distinctly appear, by affirmative allegations, in the record of the judgment it renders; as, without such record affirmation, the Appellate Court must presume against its authority. I believe these generally received opinions to be erroneous in every particular. I hold that the subject of the administration of estates, the execution of wills, and “Orphans’ business” generally, in the broadest acceptation of the terms, are referred, by the Constitution of the State, for adjudication, to the forum of the Probate Court alone; that the Constitutional jurisdiction of that Court is limited only by the extent and range of the subjects so referred to it; that, in disposing of such subjects, the jurisdiction of the Court is general, limited only by the necessities of the



case, and the rules of practice for the transaction of such business—which rules may be prescribed by statute, or in the absence of any statute, by the Court, or ascertained from the custom of such Courts, in similar cases. In other words: I hold, if it appears from the record, that the subject of the judgment or decree pertains to an ordinary administration, the execution of a will, or to Orphans' business, then the legal presumption is that the Court had jurisdiction, and that it has rightly exercised it, unless the contrary is affirmed by the record itself.

I am not ignorant of the decisions of our Supreme Court as to the limited, special and statutory character of the jurisdiction of the old "Orphans' Court,"—the correctness of which judgments, I shall not pretend to question. Nor am I unmindful of the fact that our Supreme Court, in recent cases, has apparently trodden through the same beaten path; but, I must add, that those recent opinions have been pronounced upon the faith of those old authorities, without an examination, and without the attention of the Court being in any way directed to the fact, that the Courts of the county have been radically re-organized within a few years past. In my investigations of this question, therefore, I shall put out of view the decisions of our Supreme Court as to the character and extent of the jurisdiction of the old "County," or "Orphans' Court." As I said before, I do not question the correctness of those decisions. That Court was undoubtedly statutory—created solely by the Legislature under the general power to create "inferior Courts." It certainly was not directly created by the Constitution. It only existed by virtue of the statute which brought it into life; and, according to well established rules, applicable to Courts having such an origin, its powers were required to be literally pursued, and its right to adjudicate, in each case, to appear by affirmative allegation in the record of its judgments. But, my position is, that the Probate Court of to-day is by no means the same as the old "County," or "Orphans' Court;" that while the County or Orphans Court was purely a statutory Court, the present Probate Court is as purely a Constitutional Court, it being created by, and its jurisdiction as distinctly defined in the Constitution, as is that of the Circuit Court. In the few remarks, therefore, which I have to make upon this question, I shall treat it as one of first impression. I deem it such, for, so far as I am aware, it has never been

examined in this State, in the light in which I now propose to view it.

Article 5, of the Constitution, is devoted to the establishment and regulation of the "judicial department" of the government of this State. In the first section of that article we find it affirmed, that "the judicial power of this State shall be vested in one Supreme Court, Circuit Courts to be held in each county in the State, and such inferior Courts, of law and equity, to consist of not more than five members, as the General Assembly may, from time to time, direct, ordain and establish."

In this section we have, combined in a few words, the Constitutional creation of "one Supreme Court, Circuit Courts to be held in each county in the State," and the entire and only power which is vested in the Legislature to create, by its enactment, other and "inferior Courts of law and equity." The succeeding sections define the jurisdiction of the Supreme Court to be general, but only appellate from other Courts. The sixth section declares that the jurisdiction of the Circuit Court shall be original in all matters, civil and criminal, not otherwise excepted in the Constitution, where the matter or sum in controversy exceeds fifty dollars. Had the framers of the Constitution stopped here, there could be no doubt on the mind of any one, but that they had already created Courts of general, original and appellate jurisdiction, and conferred the fullest power to create inferior Courts of law and equity, of such limited and definite powers as the Legislative department might, "from time to time, direct, ordain and establish." The General Assembly, by virtue of this first section, would have had the most ample "power to establish a Court or Courts of Chancery, with original and appellate equity jurisdiction," without the provision contained in the eighth section. The ninth section need not have declared that, "the General Assembly shall have power to establish, in each county within this State, a Court of Probate, for the granting of letters testamentary and of administration and for Orphans' business," in order to secure the establishment of a tribunal for the disposition of probate matters. Power to create such tribunals already existed under the first section. Still, we find that the framers of the Constitution were not willing to permit the jurisdictions of Courts of Chancery and Courts of Probate to be vested entirely in

statutory Courts—doubtless, upon the very sufficient ground, that the peculiar jurisdiction of these Courts was of too much importance to be permitted to rest upon a statutory basis, hampered by the rigid and technical rules of decision, before referred to, and which must apply to them.

But the General Assembly did not exercise the special power to create a Court of Chancery until about 1839, and never created any Probate Court at all. As to the jurisdiction of the latter Court, it attached the exercise of it to the County Court, a Court of common law, and directed that Court to hold terms under the name of an “Orphans’ Court,” to transact such “Orphans’ business” as the legislature might, from time to time, direct. It is needless to refer to decisions, in this connection, for it will be admitted that our books are full of authority declaring the old “Orphans’ Court” to be a statutory Court. It is true that the decisions upon the point are some what confused and contradictory, but the conclusion to which they all tend is, that the “Orphans’ Court” was purely a statutory Court.

In 1850, however, by an amendment to the twelfth section of the 5th Article of the Constitution, the General Assembly was directed to “provide by law \* \* \* \* for the election of Judges of the Courts of Probate, and other inferior Courts (not including Chancellors) by the qualified electors of the counties \* \* \* for which such Courts may be respectively established.” Thus, we have the Court of Probate established by the Constitution itself. It has its judge provided for, and its jurisdiction defined by the Constitution, independent of any enactment by the General Assembly, except such as is positively directed to be made in the Constitution. To say that the jurisdiction is not conferred directly by the Constitution would be simply preposterous, because it would be in the face of the plain language of that instrument—(Article 5, § 9.) To say that the phraseology used in defining the jurisdiction, is of so general a character as to make it necessary that the legislature should step in and define it by act, involves other consequences, equally absurd, as it appears to me: The defining act would then be in the place and stead of the language of the Constitution: The legislature would be deciding upon the Constitution and not the Courts, where such power is properly vested: Or, if we may suppose such

a case, if the legislature saw fit, for any reason, not to act in the premises, we should have a Judge, (for he is required to be elected, under the Constitution) to preside over a Court having no jurisdiction.

It seems to me, then, we are to read and interpret the present language of the Constitution, as follows: There shall be established in each county in this State, a Court of Probate, to preside in which, there shall be elected, by the qualified electors of each county, a Judge, to be styled the Judge of Probate. Such Court is established "for the granting of letters testamentary and of administration and for Orphans' business."

It does not seem to me that there can be a doubt started, but that the Probate Court, and its probate jurisdiction are the direct offspring of the Constitution, and that they can, in no view, be designated as statutory. If I am correct in this conclusion, then the only question which need ever be asked, in determining upon any question as to its peculiar jurisdiction, (I mean respecting estates, &c.,) is, do the terms of the Constitution comprehend the case under consideration. If they do, then no resort to the statutes is necessary, except as to the mode, if any, which may be prescribed for the enforcement of such jurisdiction, or as to the remedy or relief which the Court may grant. The Court would have the power to act, but its mode, and the result of its action would be entirely under the control of legislation. But the legislature can no more prohibit its acting in matters expressly referred to it by the Constitution, than it could abolish it, or destroy the Supreme Court.

I take it, therefore, that the only question which we have to settle is as to the purport of the words of the grant in the Constitution, which are as follows, viz: "For the granting of letters testamentary and of administration and for Orphans' business." As to the power to grant "letters testamentary and of administration" no comment is necessary. Such grant of power carries along with it all that is incident thereto—such as the jurisdiction necessary to the probate of the will upon which letters testamentary are to be granted; in other words, the power to ascertain, before authorizing the execution of an instrument as a will, whether or not the instrument is genuine and lawful. Such power, also, carries with it, as another incident, the right to see to it that

the authority of the executor or administrator, thus derived, is not abused, but is executed according to law. By such letters the representative is authorized to collect and take possession of the estate of the deceased, to pay the debts, and then to turn the residue over to the parties entitled to receive it, as heirs, legatees or devisees. It is the right and the duty of the Court of Probate, to compel the proper execution of this trust, by means of inventories, appraisements, accounts, settlements, &c., to be required in accordance with the usages and practice of such Courts, unless when the mode to be pursued is directed by statute.

The words "and for Orphans' business" may not be so definite in their import, but they were undoubtedly intended to give to the Probate Court a more extended power and jurisdiction, over matters pertaining to estates, than that conferred by the words preceding it in the grant. It is not difficult, however, to ascertain what the framers of the Constitution meant when they added those last words to the section. All we have to do is to submit the language to the ordinary test in such cases, viz: the question, what was the legal import attached to the terms immediately before, at the time, and shortly after their introduction into our Constitution. We can assuredly only understand what is meant, by what has been said in the past, by ascertaining the understanding of the language or phrase in question, when used by the intelligent people of that past day. An authority in point suggests itself: The Constitution of the United States declares that the judicial power shall extend "to all cases of admiralty and maritime jurisdiction;" and the books of reports of decisions of the United States Courts are full of authorities referring this jurisdiction to an examination of the meaning of the phrase, "admiralty and maritime jurisdiction," before, and at the time, and shortly after its adoption. It is the intention which prevailed at the time of the adoption of the Constitution which must control its present purport. The meaning of language may change with time and circumstances, but the Constitution can not be permitted thus to vary—the original intent must be held to be unchangeable.

What, then, was the meaning attached to the phrase, "Orphans' business," at the time when the Constitution was adopted? An examination of the acts of the territorial legislature, to be found in Toulmin's Digest, from the time of its organization down to the

period when Alabama was erected into a State, and of the continuous acts of the General Assembly from the latter period down to this time, will show that the words "Orphans' business" were applied to designate the very business, and all of it, in almost all of its varieties, which is now the subject of Probate jurisdiction, as set forth and defined in our Code and other laws. It is probable that no jurisdiction has been the theme of so much anxious legislation as that for the transaction of "Orphans' business." It is a singular fact, however, that with all this legislation the jurisdiction has never been circumscribed from what it was when the Constitution was framed, but has rather been the subject, when any change has been made, of favor. The changes, however, have generally been as to the modes of proceeding, and not as to any material alteration in the subjects of jurisdiction.

The limits to which I must confine myself, will not permit of a more particular reference to the different statutes which have been enacted from time to time. Such reference can easily be made by any person who may desire to look farther into the jurisdiction of the Probate Court.

If I have not been misled in my investigation of this subject, the whole jurisdiction of our Probate Courts is general over the entire subject matter of estates, their collection, settlement and distribution—even to the sale and distribution of the lands of the heir. If so, then this consequence must follow, that such jurisdiction is exclusive as well as original; that no other Court can meddle with it except by proceedings in the nature of an appeal. Farther, that such jurisdiction is plenary over the matters thus referred to it; and that the judgments of the Courts exercising that jurisdiction, are entitled to the same presumption in their favor that is indulged in towards the decrees in Chancery or the judgments of the Circuit Court. If the record shows that the subject matter of the adjudication is apparently of the nature of, or within the purview of the business of the Court, viz: that it pertains to estates, &c., or to administrations, then it seems to me that the Appellate Court should presume, until the contrary is made to appear affirmatively, that the power of the Court has been put in motion and carried out, to the final decree and judgment, in the proper and legal manner.

It has been sometimes said that it was necessary to circumscribe the jurisdiction of the Probate Court, and hold it down to a restricted rule, because it was so often the case that men not "learned in the law" filled the benches of that Court. Suppose it be granted that the fact is as so affirmed, the same authority has said, that magistrates were generally plain, unlearned men, whose proceedings must not be too closely or rigidly criticised. Will not the reasoning apply with equal force, to any Court, of which the same fact can be predicted?

What is the result of requiring that the record of the Probate Court must show every thing affirmatively? Simply this: that the Probate Judge is actually required to exercise more skill in rendering his judgments, than is exacted from the Circuit Court Judge or the Chancellor. And the technicalities with which he is thus surrounded; the particularities required of him in every entry he makes, are well calculated to divert his mind from the administration of that complete justice and equity which the law of probate enjoins, and which the people require at his hands. The existence of such a rule, it seems to me, is only calculated to direct the mind of the Judge, rather to the fullness and accuracy of his expression in rendering his decree, than to the attainment of substantial justice as the result. Would it not be better, therefore, as a matter of policy, even if the law did not strictly require it, (as I think it does,) for the Appellate Court to hold the jurisdiction of the Probate Court to be general and plenary, over the matters referred to it, and always to presume in favor of the rightful exercise of that jurisdiction until the contrary is affirmatively shown?

In conclusion of this introduction, I will refer to some extracts from an able opinion of Mr. Justice Sharky, late of the Supreme Court bench of Mississippi, upon the subject of probate jurisdiction in that State. It will be observed, that the provisions in the Constitution of Mississippi, upon the subject of Probate Courts, are not materially variant from our own, so far as this argument is concerned. The extracts are from a case in 3d Howard, commencing on page 252, and are as follows, viz:

"Mr. Chief Justice Sharky delivered the opinion of the Court. As a preliminary question in this case, our attention is directed to the respective jurisdictions of the Probate and Chancery

Courts. If the matters in the bill were recognizable by the Probate Court, then it is contended, that the remedy should have been pursued in that Court, and that the Court of Chancery had not jurisdiction. The same question has been adjudicated by this Court, but the decisions are called in question by counsel, as unwarranted by the Constitution and laws. We shall always be ready to abandon pre-conceived opinions, when convinced that we are in error ; but, in this instance, we see no reason for adopting a rule different from that already decided to be the true one. The decisions do not go as far as they seem to be understood to go by counsel. The broad proposition that an administrator could not, for any purposes, resort to a Court of Equity, or that he could not in that capacity, be there proceeded against for any contingency, was never intended to be asserted, nor do the opinions warrant any such conclusion.

“That the jurisdictions of the two Courts are not concurrent, but separate and distinct, and even exclusive in the true meaning of the term, we apprehend there can be no doubt. How is jurisdiction given to our Courts ? I answer, by the Constitution. Do they possess any other jurisdiction than such as may be expressly given with the incidents or powers necessary to carry that jurisdiction into effect ? I know of none other. The Constitution says, that the Chancery Court shall have ‘full jurisdiction in all matters of equity,’ with a proviso, that the legislature may give to the Circuit Courts, equity jurisdiction in all cases when the amount in controversy does not exceed five hundred dollars, and in cases of divorce and mortgages. Could the legislature give the Circuit Courts jurisdiction in other equity matters ? It must be answered no, and the reason is, that such jurisdiction is already given by the Constitution to the Court of Chancery. The proviso shows conclusively, that exclusive jurisdiction was intended to be given, else, why the necessity of such proviso. Whenever the legislature gives the jurisdiction mentioned in the proviso, to the Circuit Courts, the jurisdictions to that extent will be concurrent. To ascertain the jurisdiction of the Court of Chancery, we must first look to the Constitution ; we there find, that it is full and complete in all matters of equity. The inquiry is then to be made, what are matters of equity ? To ascertain this, we look to the powers exercised by other Courts of



Equity, bearing in mind the restrictions which may be imposed, or which may necessarily arise under our own peculiar system, and whatever we find to be a matter of equity, is within the jurisdiction of the Chancery Court, unless expressly, or by necessary consequence, given to some other tribunal. and in that case it is not. The Constitution has also provided, that a Court of Probate shall be established in each county of this State, with jurisdiction in all matters testamentary and of administration, in Orphans' business and the allotment of dower, in cases of idiocy and lunacy, and of persons *non compos mentis*. This is not a limited jurisdiction, but it is general in all the subjects mentioned. Could the legislature give full power over these matters to any other tribunal? If not, the jurisdiction must be exclusive, and I imagine that it will be readily answered that it could not, because the Constitution has already distributed that power to a particular tribunal. No terms of restriction or limitation were necessary in the Constitution, to confine the several subjects of jurisdiction to particular Courts; by a familiar rule of construction, the express grant of them to one, necessarily excludes the jurisdiction of others. If our Courts derive their jurisdiction from the Constitution, of course there can be no concurrent jurisdictions, except by constitutional provision, or by some law not repugnant thereto, and it does not follow, that, because the Court of Chancery in England exercised a jurisdiction concurrent with the Spiritual Courts, in matters testamentary, that it may also exercise such authority here. Whatever is a matter testamentary, or of administration, falls under the cognizance of the Court of Probates. We do not mean to decide, however, that there are not cases arising in the course of administration, which may be proper for the interposition of a Court of Equity. The same rule which is applicable to other Courts of law, will no doubt apply to this. If it be wholly incompetent to give relief, and the party has not, by his own laches, lost his remedy, then it might be a proper case for equity jurisdiction; but if the remedy can be had under the appropriate powers of the Probate Court, it should there be pursued; and the incompetency of the Court to give relief, must not arise from the neglect of the party who seeks it in equity."

“ We are satisfied that there is no showing in this bill which should entitle it to the favorable consideration of a Court of Equity—no allegation of injury, for which there is not an ample and speedy remedy in other and appropriate tribunals. The facts stated, are of every day’s occurrence, and if this bill could be entertained, there are few cases of administration, which might not, with equal propriety, be settled by a Court of Chancery—in fact, it seeks nothing but to compel an account and distribution, two of the prominent duties of an administrator, in his defined course of administration, under the immediate superintendence of the Probate Court. As it may in some degree, tend to prevent future useless litigation, we deem it proper to remark, that there are but few, if any, cases of administration, in which the powers of the Probate Court are not altogether adequate to the necessary relief. Indeed, its powers may be said to be co-extensive with those of a Court of Equity, for if necessary, parties may proceed by bill and answer, and the Court may decree as the justice of the case may require. In matters of account, it possesses equal powers, which can be more speedily exercised, and with less expense. We would, therefore, admonish all who are interested in estates, that the progress to final settlement should be watched with diligence through the Probate Court.”

## ATTORNEY'S FEE BILL,

ADOPTED BY THE BAR OF MOBILE, MARCH, 1846.

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1. In ACTIONS OF EJECTMENT, and other actions for the recovery of real estate, where the title is doubtful and contested, and the value of the property is \$10,000 or less, 10 per cent. on the value to the successful party, and  $2\frac{1}{2}$  per cent. to the unsuccessful party.—Where the title is clear and uncontested, half of the above charge; and where the value exceeds \$10,000 half of the above charge on such excess, but in no case less than..... \$50 00
  
2. In ACTIONS OF DETINUE and TROVER—The same charges as above, but in no case less than..... 20 00
  
3. In case of FORCIBLE ENTRY and DETAINER—  
 For attending before a Justices' Court, not less than 25 00  
 For attending before a Superior Court, additional fee, 25 00
  
4. In ACTIONS OF TRESPASS and ACTIONS ON THE CASE—To the plaintiff, 10 per cent. on the amount recovered and made; and in no case to plaintiff or defendant, less than..... 25 00
  
5. In ACTIONS OF DEBT, COVENANT and ASSUMPSIT—  
 To the plaintiff, commissions as follows :  
 On the amount litigated, recovered and made..... 10 per ct.  
 On the amount not litigated, but recovered and made, 5 per ct.  
 On the amount litigated and not recovered,..... 5 per ct.  
 On the amount litigated and recovered, but not made, 5 per ct.  
 On the amount not litigated, but recovered and not made,.....  $2\frac{1}{2}$  per ct.  
 But in no case less than..... 10 00  
 To the defendant, in litigated cases—  
 On the amount litigated successfully,..... 10 per ct.  
 On the amount litigated unsuccessfully,..... 5 per ct.  
 But in no case less than..... 10 00  
 To the defendant, for appearance only, in unlitigated cases—One per cent. on the amount sued for ;  
 But in no case, in a State Court, less than..... 10 00  
 And in the United States Court, not less than..... 25 00

6. For getting a claim secured,..... 5 per ct.
7. For collecting money without suit, or for getting an open account or claim closed by note or otherwise,..2½ per ct.
8. In STATE CASES—
 

For defending a white person charged with an offence punishable capitally.....	300 00
For defending a negro on similar charge,.....	100 00
For defending a person charged with an offence not capital, but punishable by imprisonment in the Penitentiary,.....	100 00
For defending a charge of keeping a gaming table,..	300 00
For defending a charge of allowing a gaming table to be kept,.....	100 00
For defending a charge of gaming,.....	25 00
For defending in other State cases, not less than....	10 00
For aiding in prosecuting, at least as much as for defending.	
9. In cases of PETITION FOR DOWER, or for PARTITION, or for the SALE OF REAL ESTATE, or for PROCURING TITLES TO REAL ESTATE, if litigated, 5 per cent. on the value in controversy ; if not litigated, 2½ per cent. on such value, but in no case, less than..... 25 00
10. In CONTESTED WILL CASES—to the successful party, 5 per cent. on the amount in controversy; to the unsuccessful party, 2½ per cent. on such amount, and in no such case, less than..... 50 00
11. For attending on behalf of EXECUTORS, ADMINISTRATORS, &c., to the settlement of their accounts, 2 per cent. on the amount of the largest side of the account, and in no case, less than..... 25 00
12. For appearing for EXECUTORS, ADMINISTRATORS, &c., to resist a settlement, 5 per cent. on the estimated amount of assets in their hands, and in no case, less than..... 50 00
13. For prosecuting or attending to a claim of a creditor, legatee or distributee, in the Orphans' Court, the same fees as in actions of assumpsit.
14. In CHANCERY CASES, litigated—To the successful party, 10 per cent. on the first \$10,000 in value of the subject in controversy, and 5 per cent. on the excess over \$10,000—to the unsuccessful party, and also, in uncontested cases, half the above fees; but in no case, less than..... 25 00

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|--|-------|
| 15. In QUI TAM ACTIONS—To the plaintiff, 25 per cent. on the amount recovered and made; and in no such case, to plaintiff or defendant, less than.....   | 25 00 |
| 16. For HABEAS CORPUS, and proceedings thereon, at least.....  | 25 00 |
| 17. In ADMIRALTY CASES and ATTACHMENT CASES, the same fees as in action of assumpsit; and for preparing the papers, an additional fee of.....  | 15 00 |
| 18. For attending to any other business in any Court of Record, or any other business requiring a Lawyer to leave his office, not less than.....   | 10 00 |
| 19. For attending before the Mayor's or a Justices' Court, not less than.....  | 5 00  |
| 20. For attending to the taking of depositions, for each witness, at least.....  | 5 00  |
| 21. For getting affirmance of judgment in Supreme Court on certificate, half the damages.  |       |
| 22. For arguing a case in the Supreme Court, the same fee generally as in the Court below, but in no case, less than.....  | 50 00 |
| 23. For writing a WILL, not less than.....   | 25 00 |
| 24. For writing an ABSOLUTE DEED or MORTGAGE of real estate, if the property conveyed is of the value of \$1,000, or less,.....  | 5 00  |
| If the property is over \$1,000, and not over \$10,000 in value,.....  | 10 00 |
| If the property is over \$10,000 in value.....   | 20 00 |
| 25. For writing a DEED OF TRUST, ASSIGNMENT or MARRIAGE CONTRACT, one per cent. on the value of the property, but in no case, less than.....   | 10 00 |
| 26. For writing any other contract, not less than.....   | 5 00  |
| 27. For oral opinion or advice, not less than.....   | 5 00  |
| 28. For written opinion or advice, not less than.....  | 20 00 |
| 29. Where a case is compromised before judgment, 5 per cent. on the amount realized to the plaintiff.  |       |
| 30. The foregoing fees are to be regarded as minimum fees, and subject to contracts or charges for larger or contingent fees according to the circumstances of each case of which each Attorney may judge for himself. |       |
| 31. In cases where litigation is expected, it is considered reasonable that a portion of the fee should be required to be paid in advance, or the whole secured.   |       |

32. To avoid misunderstandings between Attorneys or Clients, it is recommended that special written agreements be made, when convenient.
33. The members of the Mobile Bar, subscribing to this Fee Bill, concur in thinking the foregoing Fees and Regulations just and reasonable and in accordance with previous general usage in Mobile, and approve them as a standard by which to regulate their charges.

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## ATTORNEY'S FEE BILL,

ADOPTED BY THE BAR OF MARENGO COUNTY, 1854.

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1. For collecting money by suit or otherwise, without litigation, when the sum does not exceed \$100..... \$5 00  
 Upon all sums over \$100 five per cent.  
 When the money cannot be made, half commissions upon the amount of the judgment.
2. For procuring note of debtor in settlement of open account, or unliquidated demand, 2½ per cent.
3. For securing claims, the same fees as for collecting.
4. Upon all sums collected, secured or liquidated for non-residents, 5 per cent.
5. In each litigated case for the recovery of debt 10 per cent. upon the first \$3,000, and 15 per cent. upon balance in controversy; but the fee shall not be less than, 10 00
6. In every litigated case for the recovery of property and damages, or either, 10 per cent. upon the first \$3,000, and 5 per cent. on the balance; but the fee in such case shall not be less than..... 20 00
7. For prosecuting a case of slander..... 200 00
8. And for defending the same..... 100 00
9. In actions of false imprisonment, breach of marriage contract, seductions, crim. con., malicious prosecution, and suing out attachments..... 50 00
10. In actions of qui tam or debt to recover forfeiture or penalty, \$20, and 10 per cent. upon the amount sued for.

11. In action of trespass to person \$25, and 10 per cent. upon amount recovered for prosecuting. For defending same.....	25 00
12. In prosecutions for felony.....	100 00
13. For fornication and adultery, first offence.....	50 00
14. Gaming, betting, &c.....	20 00
15. Trading with slaves or retailing.....	25 00
16. For all other misdemeanors.....	25 00
17. For simply preparing bill or answer in Chancery..	25 00
18. And for prosecuting or defending case in Chancery,	25 00
19. For a petition in Chancery, in nature of bill.....	15 00
20. For foreclosing mortgage in Chancery, in case not litigated \$25; and 5 per cent. upon the amount collected, and $\frac{1}{2}$ per cent. on amount not collected. And when the case is litigated, \$50; and 10 per cent. upon all over \$500 and not exceeding \$3,000, and 5 per cent. on the balance.	
21. In suits in Chancery for a division of property \$25; and 1 per cent. upon the interest of your client.	
22. In cases of creditor's bills or to reach equitable assets 10 per cent. upon amount in controversy; but the fee shall in no such case be less than.....	50 00
23. In suits in Chancery to recover property, \$100; and 10 per cent. on the amount in controversy over \$500 and not exceeding \$3,000, and 15 per cent. upon the balance.	
24. For attending to the taking an account before the Master, for each day.....	10 00
25. For attending the taking of depositions for each witness, \$5; but we are not required to charge exceeding \$10 per day.	
26. For petition in Probate Court to sell land, and attending to same, \$20; and when the land exceeds in value \$500 1 per cent. upon the first \$2,000, and $\frac{1}{2}$ per cent. upon the balance.	
27. For defending application in Probate Court to sell land, the like fees.	
28. For probating will not contested.....	10 00
29. And when contested.....	50 00

30. In petition for dower, not litigated.....	15 00
31. And when litigated.....	50 00
32. For attending to such business of an executor, administrator or guardian as does not include the outdoor business, and the collection and disbursement of the money of the estate, $\frac{1}{3}$ of his commissions.	
33. For general retainer, as counsel of executor, administrator or guardian,.....	25 00
34. In taking an account before the Probate Judge, for each day.....	10 00
35. In contested road case before Commissioners' Court,	25 00
36. Petition in Probate Court to perfect titles to land, \$20; and $\frac{1}{2}$ per cent. upon the value of the land over \$1,000.	
37. For writing deed or power of attorney.....	5 00
38. For a simple will, deed of trust, mortgage, or articles of partnership, not less than.....	10 00
39. In unlawful entry or forcible detainer before justice of the peace.....	20 00
40. In all other litigated cases before a justice.....	5 00
41. For a legal opinion.....	10 00
42. Where case is compromised before trial the fees shall not be less than half.	
43. Contingent fees shall be at least double the fees herein specified.	
44. Where it is not herein otherwise provided, the fees for prosecuting or defending cases, shall be the same.	
45. The fee shall in no case, or for any service, where a charge is made, be less than.....	5 00
46. Nothing herein contained shall prevent the rendering of services gratuitously, or prevent one member of the Bar from aiding another upon such terms as he may think proper.	
47. For procuring the affirmance of judgment in Supreme Court, upon certificate, one half the damages.	
48. In litigated cases in Supreme Court the fees shall be at least one half of what may be charged in the Court below, but shall in no case be less than.....	25 00



## RULES

IN FORCE IN THE PROBATE COURT FOR MOBILE COUNTY.

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*State of Alabama,* } By the Court.  
*Mobile County.*

For the safety of files and records, the better to secure all written evidences pertaining to estates of deceased persons and wards, and to ensure the orderly and accurate transaction of the business of this Court: It is ordered, that the following Rules, numbering from one to ten, inclusive, be spread upon the minutes—this being a day of a regular term, and the Court now being in open session, to wit:

## RULES.

1. To enable the Judge to comply with subdivisions three and four of § 672 of the Code, no paper or record, belonging to this office or Court, will be permitted to be carried from this office by any person. And this rule is made inflexible, except when the ends of justice may demand, and some other Court, on due motion, shall require the production of the original paper or record, according to § 2295 of the Code.

2. The accounts of receipts and disbursement of executors, administrators and guardians, must show, not only all the items of receipt and disbursement, stated separately, but also the sources from which the money has been collected, and the amount from each source.

An account containing general statements of money collected, such as: This amount collected for negro hire, or for rent, or on account, will not be allowed to be filed. The statement must be particular—as thus: To this amount collected from A. B., for the hire of Jack for month of February last: To this amount from C. D., for rent of store No. 100 Commerce street, in the city of Mobile, for the quarter ending February 1st, 1857—as by this

mode of statement, only, can the Court make an investigation which ought to be satisfactory.

Net collections, after making deductions for expenses, &c., must not be stated, but the gross amount collected must be charged, and the items of expense stated in the column of credits, so that the Court and those interested in the account may have an opportunity for proper examination.

Credits, claimed upon a general charge, as, "To sundries," will not be allowed. The items making up the sundries must be separately charged, so that the Court may be able to pass upon each.

The exact debt or purpose for which each disbursement is made, must be stated in the account.

3. If a payment has been made to the heir or distributee, it must not be charged in the account with the estate, but should be set forth in a separate account against such heir or distributee, so that, upon final settlement, the same may be in a position to be investigated, and, if found to have been properly paid to the heir or distributee, be then deducted from his distributive share, as a part payment thereof.

4. For the purpose of facilitating the orderly dispatch of matters pertaining to settlements, when an account may be disputed, the party contesting must file his exceptions in writing, specifying to which items of the account he excepts, with the grounds of exception, or as to which, additional proof may be required.

5. Accompanying each statement and account filed for final settlement, there shall be furnished to the Court, in writing and under oath, a list of the property, whether real, personal or mixed, belonging to the estate or ward, and which may be subject to distribution and division among the heirs of the deceased, or among the legatees, or devisees under any will, or required to be turned over to any ward.

6. No former account of an executor, administrator or guardian will be inquired into, except for some special reason articulately alleged in writing; and when so inquired into, the investigation shall not extend to the account generally, but shall be confined to what is so specially alleged. Such objections and exceptions must be filed at least one day prior to the day of hearing.

7. When it is sought to charge a representative or a guardian with more than appears in any of his accounts, the matter so sought to be charged, must be distinctly alleged in writing, and filed at least one day before the day of hearing.

8. No extra allowance will be made for special or extraordinary services, except upon final settlement, unless under peculiar circumstances, to be judged of by the Court in each instance.

No extra allowance will be made, under any circumstances, unless the services upon which the claims for such allowance is based, are particularly named in writing, under oath, and in detail.

9. In all cases where a minor over the age of fourteen is required to be brought into Court, for any purpose, and where he resides in this State, and no other provision is made as to notice, the notice or citation must be personally served on such minor; and when the minor in any such case is under fourteen years of age, then such service, when not required to be made otherwise, must be made upon the person having the actual custody of the minor: *Provided*, that in all cases where a minor, having a guardian in this State, is required to be brought into Court, for any purpose, such guardian shall also be entitled to notice.

10. On application to sell land, if there are more pieces than one, each must be separately described and numbered in the petition.

#### REMARKS SUPPLEMENTAL TO THE FOREGOING RULES.

It is very desirable that the foregoing rules should be complied with in all cases; and, when counsel are employed, a strict compliance will be rigidly exacted.

FORM FOR OPENING COURT ON THE SECOND MONDAY OF THE MONTH.

—Code § 673.

*State of Alabama,* }  
*Mobile County.* } ss.

At a regular term of the Honorable, the Court of Probate, held in and for said County and State, at the Court house of said County in the City of Mobile, on the second Monday of January, in the year of our Lord, one thousand eight hundred and fifty-seven, being the twelfth day of said month, the following proceedings were had, to wit:

EDWIN RUST, Esquire, presiding Judge.

*John Jones Ford, deceased, Estate of,* }  
*As to sale of lands.* }

(Here follows the entry.)

And the Court adjourned.

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*John Lorsque, deceased, Estate of,* }  
*As to settlement of, &c.* } January 13, 1857.

(Here follows entry. Proceed thus from day to day until Saturday prior to the second Monday of the month when the Court should be adjourned without day, and the minutes, for the term, should be signed by the Judge.)

And the Court adjourned *sine die*.

EDWIN RUST, Judge.

# PETITIONS, ORDERS, DECREES, &c.

FOR THE

## PROBATE COURTS OF ALABAMA.

[ No. 1. ]

PETITION to COMPEL the PRODUCTION of a WILL.—Code § 1622.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

Your petitioner, John Jones, respectfully states unto your Honor, that Richard Rich, late an inhabitant of this county, departed this life on the — day of —, 18—, (*or, as stated in the form of the petition for probate*) leaving as your petitioner is credibly informed, and verily believes, a last will and testament in writing, made and executed by him, and duly and properly attested by subscribing witnesses thereto; in which said will your petitioner has an interest, being a legatee therein named, as he is informed and well assured, (*or state any other supposed legal interest.*)

Your petitioner states, that he is also well assured, and credibly informed, that said will is now in the possession and custody of one John Robb, a resident of this county; and your petitioner avers and charges, that said Robb, utterly fails to produce said will, although he has been often requested so to do, before this day, by the widow and next of kin to the said testator, as well as by your petitioner.

Whereupon, and inasmuch as the devisees and legatees interested in said will are likely to be greatly prejudiced and

damaged unless said will shall be produced, by the aid and interference of your Honor to compel the production thereof, your petitioner prays your Honor to cause such orders to be made, and such process to be issued as may be necessary and proper to cause said will to be produced in accordance with right and justice in the premises, and the requirements of the law in such cases, and so that said will may be duly probated and admitted to record in this honorable Court, and the rights and interests of the beneficiaries under said will be fully protected. And as in duty bound, &c.

Subscribed and sworn to, &c.

JOHN JONES.

[ No. 2. ]

ORDER of Court setting a day to hear Petition to COMPEL PRODUCTION  
of a WILL.

*Richard Rich, deceased, }  
In the matter of the Will of }*

18

This day comes John Jones and files his petition in writing, and under oath, alleging therein, among other matters, that said Rich departed this life in this county, on the — day of —, 18—, having in due form and in writing, made his last will and testament before his death, which said will is alleged to be improperly and wrongfully withheld from those interested in it, by one John Robb, a resident of this county, notwithstanding the request made by the said petitioner, and by the widow, and next of kin of said supposed testator to him, the said Robb, that he should produce said will and allow the same to be probated in this Court: And the Court having heard and considered the showing made in the premises by said petitioner: It is ordered, adjudged and decreed that citation be issued to said John Robb, requiring him on or before the — day of —, 18—, to produce before the Judge of this Court, the said last will and testament of the said Richard Rich, deceased.

## [ NO. 3. ]

ORDER of ATTACHMENT on failure to PRODUCE the WILL, or to account  
for the non-production thereof.

*Richard Rich, deceased, }*  
*In the matter of the Will of }*

18

And now at this day, it appearing to the satisfaction of the Court, that the citation ordered by the decree of this Court, rendered on the — day of —, 18—, to be issued to be served on one John Robb, requiring him on or before this day, to produce before the Judge of this Court, the last will and testament of said deceased, has been duly issued and returned served on said Robb by the sheriff of this county, a reasonable time before this day ; and the said Robb not having at any time produced, and failing now to produce said will, and failing, also, to make any affidavit in the premises as required in such case, and according to the provisions of section 1623 of the Code of this State, but being now wholly in default and in contempt of the said former order and of the said process of this Court : It is therefore, ordered, adjudged and decreed by the Court, that said John Robb be seized and arrested and be committed to the jail of this county, there to remain as a prisoner until he shall produce said will, or purge himself of the said contempt by making the proper affidavit, or until he shall be otherwise discharged by due course of law ; and that the proper process forthwith issue for the purpose of carrying this decree into effect.

[ No. 4. ]

ATTACHMENT of the person for CONTEMPT in failing to produce Will or to account for non-production.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To any Sheriff of the State of Alabama,—Greeting :

Whereas, it hath been made to appear to the satisfaction of the Judge of said Court that one John Robb, who is supposed to have possession of the last will and testament of the late Richard Rich, now deceased, has been duly cited, in pursuance of the order of said Court, and required, on or before this day, to produce before the Judge of said Court the said last will and testament : And whereas, said Robb has wholly failed to produce said will as required by said citation, and to show any reason for such failure, or to make any affidavit in the premises, as required by law in such cases : And whereas, the said Robb has been duly adjudged by said Court to be in contempt of the said order and process of said Court in the premises, and hath been duly ordered by said Court to be imprisoned for such contempt :

You are, therefore, hereby commanded to take the body of the said John Robb, if to be found in your county, and him safely keep, so that he shall remain a prisoner, in your custody, that you may have him before the Judge of said Court on the — day of —, 18—, to answer for said contempt, unless before that day he shall be otherwise discharged by due course of law : And have you then there this writ, with your due return as to how you have executed the same.

Witness, Edwin Rust, Judge of said Court, this the — day of —, 18—.

EDWIN RUST.



[ No. 5. ]

ORDER of DISCHARGE on PRODUCTION of WILL, or on making Affidavit.  
Code § 1623.

*Richard Rich, deceased,* }  
*In the matter of his Will.* }

18

Whereas, John Robb was heretofore, under an order and decree made and entered in and by this Court on the — day of —, 18—, and by virtue of a process of this Court issued in pursuance of, and for the purpose of carrying said decree into effect, duly committed to jail, and there confined by the sheriff of this county, as will fully appear, reference being had to said process now remaining on file in this Court, together with the sheriff's return thereon endorsed; and whereas, the said Robb has produced and delivered to the said Judge of this Court a paper writing purporting to be the last will of said deceased—(or, has made and filed his affidavit in writing that no paper purporting to be the will of said deceased was ever in his possession—or, that he parted, in good faith, and without any intention to defeat the probate of said will, with the paper which had once been in his possession purporting to be the will of said deceased, to one John Wright, who was entitled to the custody thereof, before the service of said citation formerly issued in the premises:) It is therefore, ordered, that said Robb be discharged in this matter from the custody of the sheriff: But in as much, as, by the default and unlawful and improper contumacy of the said Robb, in not sooner complying with the terms of the said former decree and citation, and the requirements of the law in such cases, unlawful and unnecessary delays have been occasioned, and additional expenses and costs incurred, and other wrongs thereby done and inflicted in the premises: It is adjudged and decreed by the Court, that the said John Robb do pay all costs pertaining to, and growing out of this proceeding for the production of said will, from, and including the filing of the petition by said John Jones, to, and including this final decree of discharge; and that execution issue for the same accordingly.

## PETITION for the PROBATE of a WILL.—7 Ala. 15.

*State of Alabama, }*  
*Mobile County. }*

18

To the Honorable Edwin Rust, Judge of the Court of Probate of said County :

The petition of John Jones respectfully represents unto your Honor, that the late Richard Rich, who was an inhabitant of this county at the time of his death, departed this life on the — day of —, 18—, in the City of New Orleans, Louisiana—(§ 1621, *or*, late an inhabitant of New Orleans, Louisiana, died in this county leaving assets therein—*or*, late an inhabitant of the City of New Orleans, Louisiana, died in said city, and assets of said decedent have since come into, and are now in this county)—leaving a last will and testament, duly signed and published by him, and attested by A. B. and C. D. who reside in this county—(§ 1624, *or*, by A. B. who resides in Cahaba, Dallas county, in this State, and by C. D. who resides in the City of Louisville, in the State of Kentucky—*or*, by A. B. and C. D. who have since died—*or*, who have since gone to parts unknown to petitioner—*or*, who have since become insane—*or*, who have become incompetent since attesting the same)—in which your petitioner, as he verily believes, is named as executor thereof—(*or*, is named as a devisee—*or*, is named as a legatee—*or*, *this*, that your petitioner is interested in the estate of said decedent)—which said will is herewith produced to your Honor and propounded for probate and record in this Court.

Your petitioner further states, that the widow of said decedent is Mrs. Olivia Rich, who resides in this county, and that the next of kin of said decedent are his children : John, who is under the age of fourteen years, and who resides with, and is in the custody of his mother, the said Olivia ; Thomas, a minor, over the age of fourteen years, and residing in this county ; Johnston, who is of full age, and resides in the City

and State of New York, and Jimsey, who resides with his mother, and is of full age, but believed to be of an unsound mind.

In consideration of all which, your petitioner prays that a day may be set for the hearing of the matter of this petition: that subpœnas may be issued to bring in said subscribing witnesses to testify on such appointed day—(§ 1625, *or*, that a commission may be issued, in accordance with the statute in such case made, to be directed to some suitable person residing in said Louisville, to act as commissioner, to take the deposition of said subscribing witness in proof of said will—*or*, (§ 1624) that subpœnas may issue to bring in A. B. C. D. and E. F. to make proof of the hand-writing of said testator, and of said subscribing witnesses)—that due notice of this application may be given to the said widow and next of kin of said deceased; and that such other proceedings, orders and decrees may be had and made in the premises, as may be requisite and proper to effect the due probate and record of said will according to law. And as in duty bound, &c.

Subscribed and sworn to, &c.

JOHN JONES.

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[ NO. 7. ]

PETITION for PROBATE of the WILL of a person who did not die in, and who was not an INHABITANT of this State at the time of his DEATH, and whose Will has been admitted to Probate in another STATE or Country.—Code § 1630.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of said Court:

The petition of John Jones respectfully shows unto your Honor, that Richard Rich, who was at the time of his death, an inhabitant of Liverpool, in the United Kingdoms of Great Britain and Ireland—(*or*, of the City and State of New York)—departed this life the — day of —, 18—, leaving

a last will and testament made and executed by him, and attested by A. B. and C. D. as subscribing witnesses thereto, who—(*stating the locality or condition of the witnesses, as in the petition last preceding. The particular statement as to locality of witnesses is made so that they may be reached if any party in interest should desire it for any purpose. It is, too, a part of the proper history of the will*)—and that said decedent left assets in this county—(*or, any one of the causes authorizing probate in the county, set forth in the preceding petition*) in which said will your petitioner is named as sole executor thereof—(*or, any of the facts stated in this connection in preceding petition, § 1620 of Code.*)

Your petitioner further states, that said will has been admitted to probate in and by the Surrogate's Court of the City of New York, a Court of competent jurisdiction, for such purposes, under the laws of said State of New York, all of which will fully appear by an inspection of said will—(*§ 1630 or, a copy of said will, as the case may be,*) together with a copy of the probate thereof in said Surrogate's Court, all duly certified as required by the laws of this State, and which are now herewith presented.

Your petitioner further shows that the widow of said decedent is Z. C. residing, &c. (*Proceed here with statement as to widow and next of kin, and conclude with the same prayer, as in last petition.*)

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[ No. 8. ]

PETITION for the PROBATE of a NUNCUPATIVE WILL.—Code § 1615, 1616 and 1619.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of said Court :

Your petitioner, John Jones, respectfully shows, that on the — day of —, 18—, and more than fourteen days since, Richard Buntline, who was then languishing under a

dangerous illness, which proved to be his last sickness, and of which he died, in said county, two days thereafter, the said Buntline then being at his dwelling, and being of sound mind, and fully capable of making his will—(or, then being at a place where he had resided ten days or more—or, having been taken sick while from his home, and died before his return)—made his last will as to certain personal property therein referred to, and specified in the manner and form of a nuncupative will, by uttering the testamentary words contained in the paper writing herewith presented, purporting to be a nuncupative will of the said testator; and that said testator died, as aforesaid, without making any other than said nuncupative will, and without having revoked or altered said will. And your petitioner further states, that at the time of uttering the said testamentary words, the said testator called upon all persons present—(or, upon A. B. and C. D. who were then present)—to take notice, or bear witness, or to that effect, that what he was about to say, was his will.

Your petitioner further shows, that the persons present at the making of said will, and who can testify to, and prove the same, were John Williamson and William Johnstone, both of whom reside in this county; and that on the day following the death of the testator, said witnesses reduced the said testamentary words to writing, and certified and subscribed the same, in form as the same now appears in said paper writing hereto attached.

Your petitioner further shows, that said decedent left him surviving his widow, Mary, who resides in Nashville, Tennessee, and—(*set forth the next of kin as in the forms preceding*)—who would have been the only persons entitled to distribution of said estate had the said deceased died intestate. Your petitioner further shows, that the property disposed of by said will, does not exceed five hundred dollars in value, and further, that your petitioner was duly nominated to be the executor of said will. (See Code § 1620.)

To the end, therefore, that the validity of said nuncupative will may be fully established, and that the same may be admitted to probate and record, in said Court, according to the forms prescribed by law, your petitioner prays that a day may be set for hearing this petition, and for making probate of said will: that the said widow and next of kin of said testator may be notified hereof, and of such day as may be so set, in order that they may appear and contest the validity of said will, if they shall think proper, and that said witnesses may be summoned to testify in the premises at such hearing and to make proof of said will. And as in duty bound, &c.

Subscribed and sworn to, &c. .

JOHN JONES.

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[ No. 9. ]

FORM of NUNCUPATIVE WILL—See Code § 1616.

The undersigned, Abel Readywell and Caiphas Goode, who reside in the County of Mobile and State of Alabama, were on the — day of —, 18—, at the dwelling of the late Richard Buntline—(or, at a place in said county where he had resided ten days or more,)—in said county, who was then ill of a disease which proved to be his last sickness, at which time and place, the said Richard, he then being of sound mind and disposing memory, and fully capable of making his will, but apprehensive of his approaching death, expressed a desire to make his will, and, with that purpose and intent, called upon all persons present,—(or, “some of the persons who were present,”—*naming them*,)—among whom were the undersigned, as aforesaid, to take notice, or to bear witness, or to that effect, that what he was about to say was his will; and thereupon, then and there, did declare and utter the following testamentary words to wit: (*Here insert the language of the testator, which should be reduced to writing*

*as soon as possible after its utterance.*) The undersigned further state, that said Richard died on the morning next after the day on which said will was made; and that the said will, of which the foregoing is a complete and accurate statement, was reduced to writing by them on the same day the said testamentary words were uttered, and as soon after their utterance as the circumstances of the case would permit.

In testimony of all which, we have hereunto set our hands and seals, this May the sixteenth, A. D. 1855.

A. READYWELL.

C. GOODE.

[ No. 10. ]

ORDER APPOINTING a DAY for the PROBATE.

<i>Richard Rich, deceased,</i>	}	18
<i>In the matter of the Probate of his Will.</i>		

This day came John Jones, and filed his petition, in writing and under oath, therewith producing, and filing in this Court, an instrument of writing purporting to be the last will and testament of said Richard Rich, deceased,—(or, a copy of the last will and testament, together with a copy of the probate thereof, in the Court of the Surrogate of the City and State of New York, duly certified as the law directs in such cases,—see Code, § 1630,) and praying for such orders, decrees and proceedings, as may be proper and requisite, for the due probate and record of said will in this Court; which said instrument appears to be attested by A. B. and C. D. of this county, and who are alleged to have signed the same as subscribing witnesses thereunto. And it appearing to the Court, from said petition, that said petitioner is one of the next of kin of said deceased—(or state any other fact giving the right to propound the will.—See Code § 1620,)—that Olivia Rich, who resides in this county, is the widow of said decedent: that said decedent left four children, him surviving,

viz : John, who is under the age of fourteen years and now in the care and custody of the said Olivia, his mother ; Thomas, a minor, over the age of fourteen years, and a resident of this county ; Johnstone, who is of full age and who resides in the City and State of New York ; and Jimsey, who is of full age, but believed to be of unsound mind, and who now resides with his mother, the said Olivia.

It is therefore, ordered by the Court, that the — day of —, 18—, be set as a day for hearing testimony in proof of said instrument as such will. That said A. B. and C. D. be subpoenaed to be and appear on said — day of —, 18—, in and before this Court, to testify and give evidence of and concerning all, and any facts touching the question of the validity of said instrument as such will :—(*following however, the prayer of the petition on this point, if consistent with law, as third parties may be required to prove the hand-writing of the testator and of at least one of the witnesses—Code § 1624-'25— or a commission may be necessary, to take the depositions of witnesses, see Code § 1626.\**) That said John and Jimsey be notified of this proceeding, and of the day above set for hearing the matter, by citation, to be served upon their said mother, for them, at least ten days before said — day of —. That said Olivia, Jimsey and Thomas, also, have the same kind of notice, and by such personal service thereof for the same length of time before the said day of said hearing : That said Johnstone be notified, and brought in as a party to this proceeding, by publication† continued for three successive weeks in the —, a newspaper, published in this county, a copy of which shall be sent to him post-paid, through the public mail, and properly addressed to said

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\* Nothing of this kind would be required, however when the will is to be probated on a copy and a certified record from another State or country under § 1630 of the Code, as in that case, unless disputed by proof, everything is presumed from the record.

† Strictly speaking, perhaps, no publication need be made where either the widow or any of the next of kin reside in the State, but it is deemed better that it should be made.—See Code § 1932-'33.



Johnstone, at said City of New York, within five days after the first day of publication, as above ordered: That the appointment of a suitable person to act as guardian *ad litem* for said minors be postponed until said citations shall have been duly served on said minors, agreeable to the foregoing terms of these present orders, for such a length of time as shall be deemed and adjudged by the Court, to be reasonable and sufficient for such of said minors as are over the age of fourteen years, and for the friends and custodians of others who are interested; and who should be represented by guardian, to come in and nominate to the Court a proper person to act as such guardian.

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[ No. 11. ]

ORDER appointing GUARDIAN AD LITEM for MINORS and for persons of UNSOUND MIND.—See 1 Ala. R; 380-904; Ala. R. 253.

<i>Richard Rich, deceased,</i>	}	18
<i>In the matter of his Will.</i>		

And it being this day fully proven to the Court, that the publication has been made; and notice given to the widow and next of kin of said deceased, as required by, and in strict accordance with the former order of this Court, made and entered, in this proceeding, on the — day of —, 18—, and none of said minors, nor any other person for any of them, or for the said Jimsey, having appeared, or in any way signified to this Court a choice of any fit or proper person, to represent them, and to attend to their interests in this proceeding—(*or, the words*, “and the said Thomas having appeared and nominated Aurelius Goode, Esq., to be his guardian *ad litem* in this proceeding, and the said Olivia having also appeared and requested the Court to appoint the said Goode to be the guardian *ad litem* in this proceeding for said Jimsey”—*or*, “and the said Thomas not having appeared, nor any proper person for him, to make choice of a

guardian *ad litem* to represent him in this proceeding, now comes the said Olivia and requests the Court to appoint Aurelius Goode, Esq., to be such guardian *ad litem* for said Thomas, John and Jimsey, and the said Goode now appearing in open Court, and consenting to act, &c. (*The order to notify, of course, should be omitted when the guardian is present.*) It is now therefore, ordered by the Court, that Aurelius Goode, Esq., be, and he is hereby appointed guardian *ad litem*, in this proceeding, for said minors and for the said Jimsey; the said Goode being considered by the Court, as, in every respect, a fit and proper person to attend to, and to protect the interests of said minors and of the said Jimsey in the matter of the probate of said will. It is further ordered, that said Goode be forthwith notified of his said appointment, and of the day set for hearing the testimony and proof as to the validity of said will, that he may attend, and be prepared properly to contest the same in behalf of said minors and of said Jimsey.

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[ No. 12. ]

ALLEGATIONS for a CONTEST of a WILL.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court:

Your petitioner, Olivia Rich, respectfully represents, that she is the widow of Richard Rich, and therefore, interested in his estates:—(*or state any other interest, Code § 1634*)—that an instrument of writing, purporting to be the last will and testament of said decedent, has been filed in this Court, by John Jones, with the intent and purpose that the same shall be admitted to probate and record, in this honorable Court, as such last will. But, your petitioner states that the said deceased, at the time when he is alleged to have made

said supposed will, was not of sound mind, nor capable of making any disposition of his estate :—(*or, state circumstantially, any other facts relied upon to invalidate the will.*—see Code, § 1634.) Wherefore, and by reason of the premises, your petitioner says that said instrument of writing is not the lawful last will and testament of said decedent; and prays that an issue may be made up, under the direction of this honorable Court, between the said Jones and herself, and that a day may be set to try the question as to the validity of said instrument, as such will. (*If a jury is desired, add—*and that such issue may be submitted to, and be determined by a jury, in accordance with the law in such cases.)

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## [ No. 13. ]

## ORDER DIRECTING AN ISSUE to try the VALIDITY of a WILL.

*Richard Rich, deceased, }  
In the matter of his Will. }*

Olivia Rich, having filed her petition in writing, setting forth that she is the widow of said deceased, and has, therefore, an interest in his estate, and alleging that said deceased was not of sound mind, nor capable of making a disposition of his estate, on the day when it is asserted that he made the instrument of writing on file, which purports to be his last will and testament, and which has been duly propounded by John Jones, for probate and record in this Court; and the said Olivia asking, in her said petition, that an issue may be made up under the direction of this Court, and that a day may be set to try the validity of said instrument of writing as such will. (*If a jury is desired insert here—*and that such issue may be submitted to and be determined by a jury.) It is ordered, by the Court, that an issue be now made up between the said Jones and said Olivia; and that a jury be summoned to be empanelled in this Court, on the — day of —, 1855, to inquire and determine whether the said Richard

Rich, since deceased, was of sound and disposing mind, memory and understanding, and competent to devise and bequeath his real and personal estate on the — day of —, 1855, in and by the said instrument of writing purporting to be his last will and testament.

Of course the foregoing order for an issue, must vary in each case, so as to conform to the allegations of the petition for an issue. The shortest, and most convenient mode of framing the issue, is for the proponent of the supposed will, briefly to deny the validity of the will.—Code § 1634.

[ No. 14. ]

Ordinary form of TAKING PROOF of a WILL, when the same is NOT CONTESTED.—Code § 1627.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

In the matter of the probate of the last will and testament of Richard Rich, deceased :

Before me, Edwin Rust, Judge of the said Court, personally appeared, in open Court, A. B. and C. D., who having been, by me, first respectively duly sworn and examined, did and do depose and say, on oath, that they are each subscribing witnesses to the instrument of writing, now shown to them, and which purports to be the last will and testament of Richard Rich, deceased, late an inhabitant of this county : —(*stating the fact as it really may be*)—that said Rich, since deceased, signed and executed said instrument on the day the same bears date, and declared the same to be his last will and testament, and that affiants set their signatures thereto, on the day the same bears date, as subscribing witnesses to the same, in the presence of said testator : (Code § 1611.) That said testator was of sound mind, and disposing memory ; and, in the opinion of deponents, fully capable of making his will, at the time the same was so made, as aforesaid. Affiants further state that said testator

was, on the day of the said date of said will, of the full age of twenty-one years and upwards. (*If the will be of personal property only, it is sufficient to say, that the "testator was over the age of eighteen years."*)

A. B.

Subscribed and sworn to, &c.

C. D.

If the witnesses are sworn at different times, they may, if it is consistent with their separate statements, sign the same affidavit, the Judge certifying the oaths severally, according to the date, when they are each sworn.

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[ No. 15. ]

CERTIFICATE to be ENDORSED on a WILL, upon PROBATE thereof.

Code § 1628.

*State of Alabama,* }  
*Mobile County.* }

I, Edwin Rust, Judge of the Court of Probate, in and for said County and State, do hereby certify, that the within instrument—(*or instruments, if there is a codicil,*)—of writing, has (have,) this day, in said Court, and before me, as the Judge thereof, been duly proven, by the proper testimony, to be the genuine last will and testament,—(and codicil thereto, *if there is a codicil,*)—of Richard Rich, deceased; and that said will, (and said codicil) together with said proof thereof, have been recorded in my office, in Book of Wills, No. 2; pages 104 and 105.

In witness of all which, I have hereto set my hand, and the seal of the said Court, this May fourteenth, 1855.

EDWIN RUST.

This form of endorsement, will answer for nuncupative wills; wills admitted to probate upon contestation, and wills probated under § 1630 of the Code, as well as for ordinary cases. In case of a contest, the proof to be recorded would be, properly, the affidavits of the subscribing witnesses: the issue submitted, the verdict and the judgment thereon rendered.

## [ No. 16. ]

## SUBPŒNA for WITNESSES.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To any Sheriff of the State of Alabama, Greeting :

You are hereby commanded to summon ———, to appear in and before the Probate Court, to be held for Mobile County, at the Court House in the City of Mobile, on the — day of ———, 185—, to give evidence in a certain matter now pending in said Court, wherein—(*state the nature of the proceedings, and who is, or are the parties instituting the proceedings and who are to be called in to litigate with him*)—and this you shall in no wise omit, under the penalty prescribed by law. Herein fail not, and have you then this writ at the office of the Judge of said Court.

Witness, Edwin Rust, Judge of said Court, at office, this — day of ———, 18—.

Issued on the — day of ——— in the year of our Lord, 18—.

Attest: ———, Judge.

## [ No. 17. ]

## COMMISSION to take TESTIMONY.—Code § 2320. et seq.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

In the matter of } To ———, ———, Esqrs.—Greeting :

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents, do give you, or any one of you, full power and authority to examine ———, as a witness, in a cause or proceeding now depending in our said Court, entitled as is set forth in the caption hereof. And therefore we command you, or any one of you, that you do cause the said ———, to come

before you, or either of you, and then and there examine ———, on oath as a witness in the cause aforesaid. (*If there are interrogatories, add to the last sentence, the words,—upon interrogatories annexed, or, upon the annexed direct and cross-interrogatories.*) And that you, or either of you, do take such examination, and cause the same to be reduced into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said Probate Court, with all convenient speed.

Witness, Edwin Rust, Judge of our said Court, at office, this — day of —, A. D. 185—.

Attest: ———, Judge.

(*If the witness is to be examined without interrogatories, Code § 2319, add the following:*) Let — or his attorney have — days notice of the time and place of executing this commission. ———, Judge.

For general directions as to evidence in the Probate Court, see Code § 632. The reference in this section is to what is contained between pages 424 and 434, of the Code, inclusive.

There are various provisions in the Code and in the Statutes, besides those referred to at the commencement of the above form, authorizing the taking of depositions, which it is hardly necessary to refer to here, inasmuch as they will not be called into requisition except when the provisions are alluded to for other purposes.

### [ No. 18. ]

#### FORM of CAPTION to DEPOSITION.

*In the matter of* } By virtue of the commission hereto at-  
 [Here state the names of } tached, and which issued from the Pro-  
 parties and the matter in } bate Court of Mobile County, in the  
 question—briefly.] } foregoing stated matter and proceeding, and in which said  
 commission, I am named as one of the commissioners, I have  
 caused the witness named in said commission, and who is  
 known to me, to come before me at the times and places  
 hereinafter named, and the said witness having been first

duly sworn by me, did testify and depose as follows to wit :—  
*(Here follows the testimony, only commencing the deposition of each witness as follows: “I caused—(naming the witness) one of the witnesses aforesaid to come before me at—(naming the place)—on the—(naming the time, when)—and said—(naming the witness)—then and there testified as follows, viz :—(If there are no interrogatories proceed at once with the testimony; if there are interrogatories, preface each answer of the witness, thus: In answer to the first interrogatory, he says: In answer to the second interrogatory, he says: and so on through the direct interrogatories. If then there are cross-interrogatories proceed thus: In answer to the cross-interrogatories said—(name the witness)—answers as follows, to wit: to the first cross-interrogatories, he answers, &c.,—and so on through the cross-interrogatories.*

*After getting through with the testimony of all the witnesses the commissioner should append the following form of certificate:*

I, ———, one of the commissioners named in the commission hereto attached, and acting under and by virtue of said commission, which issued from the Probate Court held in and for the county of Mobile, and State of Alabama, in a certain matter and proceeding, pending in said Court, entitled as is set forth in the commencement of the foregoing deposition, do hereby certify that I caused—*(here name the witnesses)*—to come before me at the times and places respectively hereinbefore named, that the said witnesses were, and each of them was duly sworn by me, that they severally testified as it is hereinbefore set down, that the testimony of said witnesses was by me—(or see Code § 2322) reduced to writing, and that each of said witnesses subscribed his name to his own testimony in my presence after the same had been first read over to him by me; that said depositions are by me enveloped, together with all documents which have been deposed



to by said witnesses, the whole to be sealed and directed by me to the Judge of said Court, with the title of said matter or proceeding thereon endorsed. ———, [SEAL.]

Commissioner.

*Directions to Commissioner.*—Above you will find form of caption, certificate, &c., to be used where there is more than one witness. If only one witness is named it will be easy to alter the forms accordingly. In putting your seal to your certificate you can use either wax or wafer, or a mere scroll of the pen, as you may choose. If any time and place for taking the testimony has been named in the commission, the testimony must be taken at that precise time and place. If, however, in such a case the examination is commenced on the day appointed, and cannot be completed, it may be continued on the next day (but between the same hours, if any are named) and so on, from day to day, till completed. In such a case your certificate should show the facts, and circumstances attending the adjournment, recommencement, continuation and close of the examination. In case any paper should be referred to by a witness in his examination, which is to be returned to Court with his evidence, such paper should be marked by you in some way to designate by what witness it is referred to, &c. In case any witness has conscientious scruples about taking an oath, it will answer to let him affirm, and your certificate may be altered accordingly.

When the witnesses have all been examined, all the papers should be attached together with tape, or riband, and the whole enclosed in an envelope, sealed up in such a manner that it cannot be opened without breaking the seals. Across the seal you should write your name or names. The package should then be endorsed with the title of the matter or proceeding in which examination has been had, and the names of the witnesses examined. The whole may then be directed to the Judge of the Court from which the commission issued. You must deposit the package in the post office, with your own hands, and, either yourself certify that fact, and the date on the outside, or else get the postmaster to state, in writing, on the outside, that it was received by him, from you, and the date of its receipt. You will bear in mind also, that the postal laws now absolutely require a pre-payment of postage.

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[ No. 19. ]

NOTICE to party opposed in interest of the fact of filing INTERROGATORIES.—Code § 2320.

*State of Alabama,* }  
*Mobile County.* } Probate Court of said County.

To ——— or ———, his Attorney, Greeting :

Please to take notice, that in the foregoing stated cause or matter, pending in said Court, interrogatories to be propounded in behalf of ——— to examine ——— as a witness, have been this day filed in my office : which said interrogatories will remain on file as aforesaid, ten days after service

of this notice upon you, during which time you can file cross-interrogatories if you think proper.

Witness, Edwin Rust, Judge of said Court, at office, this — day of —, A. D. 185—.

Attest :

— — —, Judge.

[ No. 20. ]

A convenient form of RENUNCIATION of the right to EXECUTE a WILL, under section 1662 of the Code, to be presented to the Judge, by the EXECUTOR in person.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of Probate of said County:

I, John Jones, the person named in the last will and testament of Richard Rich, deceased, to be the executor,—(or, one of the executors) thereof—which will has been probated and recorded in said Court, do hereby renounce the office and trust confided to me, in and by said will, and all right to letters testamentary upon the same, and pray that this, my renunciation, may be duly entered of record.

JOHN JONES.

If the person so renouncing, is absent from the county where the probate is made, the foregoing renunciation should be attested, as required by the latter clause of § 1662 of the Code.

[ No. 21. ]

ORDER proper to be made, on such RENUNCIATION being filed.

*Richard Rich, deceased,* }  
*In the matter of the Execution of the Will of* }

John Jones, who was nominated and appointed by said testator, to be the executor,—(or, one of the executors)—of his last will and testament, having duly renounced all right and claim to execute said will, and in writing, filed the same—(or,

*if out of the county,—“caused the same to be duly attested and filed in writing,”—in this Court. It is ordered by the Court, that said renunciation be recorded, as required by law, which is accordingly done—and said renunciation is in the words and figures following, viz: (Here follows the record.)*

[ No. 22. ]

PETITION PROPOUNDING for PROBATE a WILL DISCOVERED after Administration commenced.—See Code § 1722-23.

To the Hon. Edwin Rust, Judge of the Probate Court, in and for the County of Mobile, and State of Alabama :

The petition of John Jones, respectfully shows, that heretofore, to wit : on, or about the — day of —, 185—, Richard Rich, who was then, and had been theretofore a resident of said County, departed this life, as was then supposed by your petitioner, and by those believed to have been best acquainted with his affairs, without having made any testamentary disposition of his property: and your petitioner, so believing, at the request of Mrs. Olivia Rich, the widow of said decedent, and under and by virtue of the order and due appointment of this honorable Court, made and entered on the — day of —, 185—, became the administrator of the estate of said deceased—which said administration of your petitioner is, at this time incomplete, and still remains unsettled in this Court.

Your petitioner further states, that it was not known, until sometime subsequent to the death of said Richard, and not until after your petitioner had obtained authority from this Court, as aforesaid, to administer upon said estate, that said deceased had left any such will. Your petitioner further states that such will was discovered as follows, viz : The said Olivia, who is totally unable to read writing, about the

— day of —, 185—, handed to your petitioner a bundle, or mass of papers, which, she said, had belonged to said deceased, in his lifetime, and requested petitioner to examine them, and see if there was anything of value among them. Petitioner states that he accordingly examined said papers, and that during said examination, and among said papers, he found the said written document, purporting to be the last will and testament of said deceased. And now, your petitioner states that said document, purporting to be such will, has, ever since the same was, so discovered, as aforesaid, continually remained in his possession and under his control,—your petitioner being, as he humbly conceived, the rightful custodian of such paper, in as much as he is therein named by said testator as the sole executor thereof, and has no other interest in the same. (See Code § 1620.)

Your petitioner—(*Here state the heirs as in case of the petition for the probate of an ordinary written will, which is brought into Court under ordinary circumstances.\**)

Your petitioner further states, that A. B. and C. D. whose names appear affixed to said instrument, as subscribing witnesses to the same, have departed this life since the day on which said instrument bears date ; but your petitioner is advised and is well assured that, by testimony of various credible and respectable persons, he can amply and sufficiently prove the death of said witnesses, and that the hand writings of said witnesses and of said testator, as their names are respectively subscribed to said will are the true and genuine signatures of each of the above named parties, as, also, other facts and circumstances strongly tending to show that said instrument is in reality and truth, the last will and testament of the said deceased.

Subscribed and sworn to, &c.

JOHN JONES.

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\* The concluding prayer for probate, &c., to be the same as in the petition here referred to.

[ No. 23. ]

## Final ORDER for PROBATE of WILL.

*Richard Rich, deceased,*  
*In the matter of the Probate of* } 18  
*his last Will and Testament.* }

This day having been regularly appointed for hearing the application of John Jones, which was heretofore filed in this Court, for the probate of an instrument, (*or, if there be a codicil, one or more, say, "instruments"*) of writing purporting to be the last will and testament (and codicil thereto) of said deceased, now comes the said applicant, and also comes Aurelius Goode, Esq., who was heretofore, duly appointed, by the order of this Court, and who now consents to act as the guardian *ad litem* for John and Thomas Rich, who are minors, and for Jimsey Rich, who is alleged to be of an unsound mind, all of whom are children and heirs of said deceased; and it appearing to the satisfaction of the Court, that the notice of the said application and of the time appointed for hearing the same, has been given in pursuance of law, and in strict accordance with the former order of this Court, made and entered in the premises, on the — day of —, 18—, by publication, continued for three successive weeks in the —, a newspaper published in said county, and by citations personally served, as directed in said former order, now, on motion of said John Jones, the Court proceeds to hear said application. And it appearing to the satisfaction of the Court from the testimony of A. B. and C. D., that they respectively signed the said instrument, (*or, instruments*) of writing, purporting to be the last will and testament (and codicil thereto) of the said decedent; and which writing is now shown to them, on the day of the date thereof, in the presence of said testator, and at his request, as subscribing witness to the same, the said testator then declaring, that

said instrument (*or, instruments,*) constituted his last will,\* (and codicil,) and it being also shown, by proof which is satisfactory to the Court, that said testator was of the full age of twenty-one, (*or if the will relates only to personally, "was of the full age of eighteen"*) years and upwards, at the time of making said will; and that he was of sound mind, and fully capable of making his said will: (*or, if the probate is made under the Code § 1630, after the words in this form, "the Court proceeds to hear said application," use a form something like the following, viz: "And it being made to appear to the satisfaction of the Court, by due proof, that said testator was not an inhabitant of this State, at the time of his death: that his will, with the codicil thereto, has been duly probated in and before the Surrogate's Court of the City and State of New York; and the said John Jones having heretofore produced and filed in this Court the said will, and codicil—or, a copy of said will and codicil, as the case may be—and the probate thereof, in all respects, duly certified by the proper officers of the said Surrogate's Court)* it seems to the Court that said application should be granted: It is, therefore ordered, adjudged and decreed, by the Court, that said will (and codicil—or, that said copy of said will—and codicil) of said Richard Rich, deceased, be received, and the same is hereby declared to be duly proven as the last will and testament of said decedent, and as such, admitted to probate,

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\* *If the witnesses are dead, &c., see Code § 1624-'25, omit what occurs in the foregoing form after the words, "and it appearing to the satisfaction of the Court from the testimony of A. B. and C. D., "down to and including the words" then declaring that said instrument constitutes his last will—and in place thereof, insert the words following, viz: "that E. F. and G. H. who were subscribing witnesses to said will, have departed this life since the date of said will, (or, that that they are insane, or, out of the State, or, have become incompetent since the said will appears to have been attested,) and that their signatures thereto, (or, and having also proven that the signature of E. F., one of said subscribing witnesses, together with the signature of the said testator, are the true and genuine signatures of the said E. F. and of the said decedent.") It would also seem that in the case supposed by this note, the words, "and that he was of sound mind and fully capable of making his last will," might be dispensed with, as all presumptions are in favor of the validity of the will; and the mental condition of the testator at the time of making the will, might be impossible of proof, where the witnesses are dead, or when, from any other cause, their testimony can not be taken.*

and ordered to be recorded, together with the proof thereof, and all other papers on file relating to this proceeding. It is further ordered, that said applicants pay the costs of this proceeding."

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[ No. 24. ]

Form of ORDER where a WILL is DISCOVERED and admitted to PROBATE, after GRANT of LETTERS, in case the EXECUTOR named in the WILL fails to apply for Letters.

*Richard Rich, deceased,* } 18  
*In the matter of his Estate and Will.* }

Letters of administration, as in case of intestacy, having heretofore been granted by this Court, upon the estate of said decedent, to John Jones; and the last will and testament of said decedent having been duly established and admitted to probate and record in this Court, since the said grant of said administration, and more than five full days before this day; and Olivia Rich, the widow of said deceased, and who is named in said will to be the sole executrix thereof, not having at any time appeared and taken out, or applied for letters testamentary upon said will; therefore, and that the said will of said testator may be well and truly performed according to its true intent and meaning: It is ordered, adjudged and decreed, by the Court, that a copy of said will be, and the same is hereby annexed to the said letters of administration, heretofore granted by this Court to said Jones; and he, the said Jones, is hereby enjoined, as such administrator with the said will so annexed, to execute and perform said will in all things, according to the terms thereof, and as the law in such cases requires.

## [ No. 25. ]

PETITION of EXECUTOR for LETTERS TESTAMENTARY, after the REMOVAL of former DISABILITY—the estate having been PARTIALLY ADMINISTERED, in the meantime, by another.—See Code § 1658, 1660 and 1661.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

The petition of John Jones, respectfully sheweth unto your Honor, that he is of the full age of twenty-one years and upwards: That in and by the will of Richard Rich, deceased, which has been heretofore admitted to probate and record in this honorable Court, he is nominated as the sole executor, (or, as one of the executors) thereof, and that he, petitioner, was unable to obtain letters testamentary upon said will, by reason of his nonage, until after the — day of —, 185—, that being the period when letters of administration upon the estate of the said Richard, with the said will thereto annexed, were granted and issued by this Court to Amand Figh, (or, the period when letters testamentary upon said will were issued by this Court to Amand Figh, who is named in said will as co-executor thereof, with your petitioner, and who has not, as yet, completed the administration of said will.)

Your petitioner, therefore, prays that supplementary letters testamentary upon said will, may be issued to him, in the same manner as the said original letters were issued, so that your petitioner shall be authorized to join with the said Figh in the further execution of said will.

And your petitioner offers A. B. and C. D., of this county, as securities, believing them to be good and sufficient as such securities, in any bond that may be required of him. And as in duty bound, &c.

Subscribed and sworn to, &c.

JOHN JONES.



## [ No. 26. ]

ORDER to cite PREVIOUS EXECUTOR or ADMINISTRATOR to SHOW CAUSE, if any there be, why the foregoing petition should not be granted.\*

*Richard Rich, deceased,* } 18  
*As to the execution of his Will.* }

Letters of administration upon the estate of said decedent, with his will thereto annexed—(or, letters testamentary upon the will of said decedent)—having been heretofore granted to Amand Figh, this day comes John Jones, and files his petition in writing and under oath, alleging that he is now entitled to participate in the execution of said will, and praying that supplementary letters testamentary upon said will, may be issued to him, upon his giving the proper security, so that he may be authorized to join with said Figh in the execution of said will, so far as the same now remains unaccomplished. And the Court deeming it meet that the matter of said petition should be inquired into. It is ordered, that Monday, the — day of —, 185—, be, and that day is hereby set as a day for the hearing of said petition. It is further ordered, that said Figh, have notice of the filing of said petition, by service of citation, at least ten days before the said — day of —, requiring him to make answer and objection, if any he has, to the allegations and prayer of said petition.

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\* This course of proceeding is not required by the words of the Code; but it does not seem proper, that an executor or administrator should have an associate forced upon him, without a day in Court to show cause against such step, if any cause may happen to exist.

ORDER for SUPPLEMENTARY LETTERS, joining an EXECUTOR with an ADMINISTRATOR or EXECUTOR previously qualified.—See Code § 1661.

<i>Richard Rich, deceased,</i>	}	18
<i>As to the execution of his Will.</i>		

This day came Amand Figh,—(*designate him as executor or administrator in accordance with the fact stated in the foregoing forms*)—in obedience to citation issued and served, in accordance with the order of this Court, made and entered in the premises, on the — day of —, 185—: (*or, “and, now at this day, it being shown to the Court, that Amand Figh—(describe him as directed above)—has been duly cited, in strict pursuance of the terms and provisions of the order of this Court, made and entered on the — day of —, 18—:)* and the Court having heard and considered the evidence, this day submitted by John Jones, in support of his petition, heretofore filed in this estate, to be authorized to participate in the future administration of the will of said testator as the sole executor—(*or, “as one of the executors”*) therein named, and being now fully satisfied, from such proof, that said Jones is now of the age of twenty-one years and upwards—(*or, is now an inhabitant of this State—or, any other fact under § 1661 of the Code*)—and that he was prevented from qualifying as executor of said will, not from any willful default of his own—(see § 1663,)—but because of his nonage—(*or any other legal disability*)—at the time when said letters were granted to said Figh; and the Court being further satisfied, from the proof, that the administration of said will is not now completed, and also, from an inspection of said will, that said petitioner was nominated, in said will, as executor—(*or, as one of the executors*)—thereof; and that the petitioner is a fit person (§ 1657) to serve as such executor; and the said Jones having filed the proper bond, as an executor of said will, in the sum of ——— dollars, which is the amount of bond given by the said Figh, and upon which

he obtained the said original letters; and the said Jones having given A. B. and C. D., as his sureties in and to said bond, and who have been approved as good and sufficient sureties, in the premises, by the Judge of this Court: It is ordered, adjudged and decreed, by the Court, that supplementary letters testamentary upon said will, do forthwith issue to said John Jones, so that the said Jones, shall be, and he is hereby authorized and directed to join with the said Figh, in the further and complete execution of the provisions of said will.

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[ No. 28. ]

Ordinary PETITION for LETTERS testamentary upon a WILL.

*State of Alabama, }*  
*Mobile County. }*

18

To the Honorable Edwin Rust, Judge of the Court of Probate of said County :

Your petitioner, John Jones, respectfully represents unto your Honor, that he is the person who is named in the will of Richard Rich, deceased, to execute the trusts and purposes thereof, and that said will has been duly proved and admitted to record in this Court.

Your petitioner begs to refer to the petition which was filed in this Court, for the probate of said will, for a correct statement as to the present residence of the widow of said testator, together with the names, ages, residences and conditions of the next of kin, heirs and legatees of said testator, so far as the same are known to him.

Your petitioner, further states, that he is of the age of twenty-one years, and upwards; that he is an inhabitant of this State, and is now willing to take upon himself the trusts intended to be confided to him by said testator, and that he is prepared to give the necessary bond and security, as your

Honor shall direct and require. He further states, that, to the best of his knowledge and belief, the value of said estate, including both real and personal property of all kinds, does not exceed about the sum of ——— dollars.

May it please your Honor, therefore, to permit your petitioner, to qualify in this Court, as the executor of said will, as was the intent of said testator. And as in duty bound, &c.

Subscribed and sworn to, &c.

JOHN JONES.

[ No. 29. ]

Ordinary form of a DECREE, granting LETTERS TESTAMENTARY.

*Richard Rich, deceased, Estate of, }*  
*Grant of letters on his Will. }*

18

It being known to the Court, that the last will and testament of said decedent has been duly admitted to probate and record in this Court,—(if the probate of the will has been contested, see Code § 1888, subdivision 1 and § 1694, and proceed as follows, viz: more than thirty days since, and that no appeal thereof, hath been taken;) and that John Jones, is named, by said testator, in said will, as the sole executor thereof; and the Court being further advised, that the entire estate of the said testator, is of the value of about ——— dollars, and not probably more; now comes the said John Jones, and files his petition, in writing, and under oath, setting forth, among other matters, his estimate of the value of said estate, as also, the names, ages, residences and conditions of the widow and next of kin, heirs and legatees of said testator, so far as he knows the same, and praying that he may have letters testamentary upon said will, duly issued to him, by, and from this Court. And the said John Jones, having given bond in the sum of ——— dollars, with such condition thereunder written as the law directs in such cases, with ———, and ———, as his securities therein, which bond hath been duly taken and approved by the Judge

of this Court: It is ordered, adjudged and decreed, that letters testamentary be, and the same are hereby granted to the said John Jones, upon said testament, the said letters to be forthwith issued, in accordance with the terms of said will: It is further ordered, that said petition, and said bond be recorded: It is further ordered, that an appraisement be made of the estate of said testator, and returned, as required by law; that A. B., C. D. and E. F., be, and they are hereby appointed appraisers, to make such appraisement, and that they have notice of this appointment.

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[ No. 30. ]

Form of BOND framed to suit the cases of EXECUTORS, ADMINISTRATORS  
and GUARDIANS.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

Know all men by these presents, that we, ———, ———, of the county of ———, are held and firmly bound unto Edwin Rust, Judge of the Probate Court, in and for the county of Mobile, and his successors in office, in the sum of ——— dollars, to be paid to the said Judge, or his successor in office; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the — day of —, in the year of our Lord, eighteen hundred and —.

The condition of the above obligation is such, that whereas, the above bound ———, has been duly appointed administrator, (*or*, administrator with the will annexed) of the estate of A. B., deceased, (*or*, executor of the last will and testament of A. B., deceased—*or*, special administrator with power limited to the collection and preservation of the estate of A. B., deceased—*or*, with power limited to the defence—*or*, prosecution—as the case may be—of

a suit in Chancery in the First District of the Southern Chancery Division of the State of Alabama, wherein C. D. is complainant and E. F. and others are defendants, and properly to dispose of the results, if any, of such litigation\*—*or*, guardian of the person and estate of C. D., an infant, of this county—*or*, guardian of the person and estate of C. D., of this county, who has been found to be lunatic by due inquisition—*or*, guardian of the property in this State of A. B., an infant, who has estate in this county, but who is a non-resident of this State—*or*, guardian of the property in this State of A. B., who is a non-resident, and who hath been duly found to be lunatic, by a competent tribunal in the State of South Carolina, where he resides.)

Now, if the said ———, shall well and truly perform all the duties which are or may be by law required of him as such ———, then the above obligation to be void, otherwise to remain in full force.

Taken and approved, — day of	}	———, [L. S.]
——, A. D., 18—.		———, [L. S.]
———, Judge.		———, [L. S.]

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[ NO. 31. ]

**ORDER setting aside first appointment and appointing new APPRAISERS.**

It will be seen, by consulting the sections of the Code, to which reference has been made in this connection, that the Appraisers are to be appointed by the Judge, at the time he grants the letters. It may sometimes occur, that the parties in interest, from some reasonable motive, may desire that a different set of Appraisers should be appointed.—(See Code § 1733.) In such case proceed as follows:

*Richard Rich, deceased, Estate of, }*  
*As to Appraisers.*

This day came John Jones, executor of the last will and testament (*or*, administrator of the estate) of said decedent, and moves the Court to revoke the order made in this estate

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\* This is one of those special administrations which is frequently required for the conduct of a suit, either as plaintiff or defendant, but not necessary for any other purpose, the forms, for obtaining which, will be found at the proper place.

on the — day of —, 18—, so far as the same relates to the appointment of A. B., C. D. and E. F. to be the appraisers of said estate, and that the Court do now appoint G. H., I. J. and K. L. to be such appraisers, in the place and stead of said A. B., C. D. and E. F. And it being shown to the Court that the object of said motion is to save expense (*or any other benefit to the estate, or great convenience to the parties*) to said estate, inasmuch as the said G. H., I. J. and K. L. propose to perform the duty of appraisers to said estate free of charge; and it being further shown to the Court, that said G. H., I. J. and K. L. are entirely disinterested, and are fit and competent persons to make such appraisement: It is ordered, that said appointment of said A. B., C. D. and E. F., be, and the same is hereby revoked and set aside; and that the said G. H., I. J. and K. L., be, and they are hereby appointed to make an appraisement of said estate; and that they have notice of this appointment.

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[ No. 32. ]

ENTRY upon the Minutes upon the coming in of the INVENTORY or APPRAISEMENT.

*Richard Rich, deceased,* }  
*Estate of.* }

This day came John Jones, the executor of the last will and testament (*or, the administrator of the estate*) of said decedent, and presents his inventory (*or, appraisement*) of said estate, in due form, and properly verified: It is ordered, that the same be filed and recorded.

## [ No. 33. ]

Entry upon the Minutes on filing a SUPPLEMENTAL INVENTORY.—Code  
§.1731-'32-'33.

*Richard Rich, deceased,* }  
*Estate of.* }

This day comes John Jones, the executor of the last will and testament (*or*, the administrator of the estate) of said decedent, and, in due form and under oath, presents a supplemental inventory of certain property of said estate which has come to his knowledge, (*or*, possession, *as the case may be*,) since he made and filed his former inventory in this estate: It is ordered, that said supplemental inventory be filed and recorded; and that A. B., C. D. and E. F., who were heretofore appointed to appraise said estate, be authorized and directed to appraise the property mentioned in said supplemental inventory.

If new appraisers should be appointed, the language of the original appointment will apply.

## [ No. 34. ]

NOTICE to APPRAISERS.—As to appointment of, see Code § 1727.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

*John Bonte, deceased,* } To A. B., C. D. and E. F.:  
*Estate of.* } You are hereby notified that letters testamentary, (*or*, of administration) have been this day granted to Archelaus Bonte, on said estate, (*or*, upon the last will and testament of said deceased,) and that you have been appointed appraisers of said estate.

Witness, my hand at office, this — day of —, 18—

EDWIN RUST, Probate Judge.



## [ No. 35. ]

PETITION for LETTERS TESTAMENTARY, where the WILL EXEMPTS the EXECUTOR from BOND and SECURITY, and when one of the EXECUTORS renounces.—Code § 1685.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Probate Court of said County :

The petition of John Jones respectfully shows unto your Honor, that he, together with Mary Rich, the widow of said testator, was duly nominated and appointed in, and by the terms of the last will and testament of Richard Rich, deceased, which will has been heretofore duly proved and admitted to record in this honorable Court, to be one of the executors thereof.

For the names, ages, residences and conditions of the next of kin of said testator, your petitioner begs leave to refer to the statement contained in the petition which was filed in this Court, for the probate of said will.

Your petitioner further states, that the said Mary Rich, who is the only other person named as executor in said will, has declined to qualify; and that she has, accordingly, had her renunciation of said trust, duly certified to your Honor—which renunciation and certificate is now herewith submitted (*or, if she appears personally in Court, proceed thus*, and the said Mary appears before your Honor, with petitioner, and now, here in open Court, tenders her renunciation of said trust, in such form as may be required by law, and the rules of this Court in such cases made.)

Your petitioner further states, that he is of the age of twenty-one years and upwards, and that he is an inhabitant of this State.

Wherefore your petitioner prays that he may be confirmed, by the order and decree of this Court, in his said nomination and appointment by said testator, as executor of said will. In making such order and decree, your petitioner

prays your Honor to inspect the terms and requirements of said will, inasmuch as he is advised and believes that he is thereby exempted from giving bond and security as such executor thereof. And your petitioner as in duty, &c.

Subscribed and sworn to, &c.

JOHN JONES.

[ No. 36. ]

GRANT OF LETTERS TESTAMENTARY, without BOND, one of the EXECUTORS named in the WILL having RENOUNCED—Order of APPRAISEMENT and Appointment of Appraisers.—Code § 1727.

*Richard Rich, deceased, Estate of, }  
Grant of Letters Testamentary. }*

It being known to the Court that the last will and testament of said decedent has been duly proven and admitted to record in this Court; and that Mary Rich, one of the executors named in said will, has, this day, duly renounced such appointment; and, it appearing to the Court, from an inspection of said will, that said testator, by an express provision, in his said will to that effect, did exempt, his executors, therein named, from giving any bond, as such; now comes John Jones, the only other person named in said will as an executor thereof, and files his application in writing, praying that letters testamentary, upon said will, may be duly issued to him: It is, therefore, ordered and decreed, that letters testamentary, upon said will, be granted to said John Jones; and that said letters issue without bond or security being required, in accordance with the terms of said will, and agreeably to the provisions of the law in such cases made.

It is further ordered, that an appraisement be made of the estate of said testator, and returned, as required by law; that A. B., C. D. and E. F., be, and they are hereby appointed appraisers, to make such appraisement, and that they have notice of this appointment.

It is further ordered, that the petition of said John Jones, filed in this behalf, be recorded.

## [ No. 37. ]

NOTICE of his Appointment to be PUBLISHED by EXECUTOR or ADMINISTRATOR.—See Code § 1734-'35-'36.

*Richard Rich, deceased, }  
Estate of. }*

Letters testamentary upon the last will and testament (*or*, letters of administration upon the estate) of said decedent, having been granted to the undersigned, on the — day of —, 18—, by the Honorable Edwin Rust, Judge of the Probate Court of Mobile county—notice is hereby given, that all persons, having claims against said estate, will be required to present the same within the time allowed by law, or that the same will be barred.

JOHN JONES.

## [ No. 38. ]

ORDER requiring an INVENTORY to be RETURNED, or that the Administrator SHOW CAUSE why an ATTACHMENT should not issue, or why he should not be REMOVED.—Code § 671, § 1696.

*Richard Rich, deceased, Estate of, }  
As to Inventory of. }*

It being known to the Court that John Jones was duly appointed in this Court, and that he qualified as the administrator of the estate of said intestate more than two months since; and it appearing to the Court, from an inspection of the records and papers on file in this estate, that said administrator has failed to file an inventory of said estate, as required by law: It is ordered, that citation issue, to be served on said Jones, requiring him to be and appear in and before this Court on the — day of —, 18—, to file such inventory, or to show cause, if any he can, why an attachment should not be issued against him (*or*, why he should not be removed and his letters be revoked, *if such a course is desirable*,) for his neglect in the premises.

There can never be any difficulty in filling up the ordinary form of citation, which will be found among these precedents, if the language of the decretal part of the order is taken as a guide.

## [ No. 39. ]

ORDER to ATTACH or to REMOVE ADMINISTRATOR for failure to file  
INVENTORY on CITATION, or to SHOW CAUSE.

*Richard Rich, deceased, Estate of. }  
Attachment (or removal) for want  
of Inventory.*

This being the day appointed, in and by order of this Court, made in the premises on the — day of —, 18—, for John Jones, the administrator of said estate, to return an inventory of said estate, or to show cause why an attachment should not be issued against him, (*or, why his letters should not be annulled and revoked, according, as may be required,*) for failure so to do; and the said administrator having wholly failed to return such inventory, in accordance with the law in such cases made, and with the said order of this Court, and having also wholly failed to show any sufficient cause, or to give any good reason for such failure: It is ordered, adjudged and decreed, that an attachment be issued out of this Court, against the said John Jones, commanding that he be attached and committed to the common jail of this county, there to remain, until he shall return such inventory, as by law is required, or until he shall be discharged by due course of law—(*or, if the decree is for removal, proceed as follows—viz:* It is ordered, adjudged and decreed, that the letters of administration heretofore granted by this Court, on the — day of —, 18—, to the said John Jones, in and upon the estate of said intestate, be, and the same are hereby revoked and annulled.

A form of Attachment will be found elsewhere. The introductory recitals, upon which the process purports to be based, must, in each case, follow the causes set forth in the order or decree.

## [ No. 40. ]

ORDER REVOKING Letters on failure to file an INVENTORY.

*Richard Rich, deceased, Estate of, }*  
*Revocation of Letters.* }

This being the day duly appointed by the order of Court, for John Jones, as the administrator of said estate, to file an inventory of said estate, or to show cause, if any he has, why he should not be removed from said administration; and it appearing, from the papers on file, that said Jones hath been duly cited, in conformity with said order; now, therefore, more than two months having elapsed since the said Jones was appointed to said administration, and he having wholly failed, and now failing to return any inventory of said estate, as by law, and by the said order and citation he was and is required to do; and said administrator having also failed to show any sufficient cause or excuse for his non-compliance with the law in this behalf made, and with the said order and citation: It is ordered and decreed by the Court, that the letters heretofore granted and issued to the said Jones, authorizing him to administer upon said estate, be, and the same are hereby revoked and annulled, and that all powers conferred upon the said Jones by virtue of his appointment to such administration do cease and determine from this day forth.

## [ No. 41. ]

ANSWER of Administrator against an ATTACHMENT or REMOVAL, and asking further time to file INVENTORY.

To the Hon. Edwin Rust, Judge of the Court of Probate in and for the County of Mobile.

The petition of John Jones, the administrator, in said Court, of the estate of Richard Rich, deceased, in answer to the citation heretofore served upon him, under an order of said Court, respectfully shows unto your Honor, that he has

been endeavoring to make and return such an inventory of the estate of said decedent as the law requires at his hands, but that he has been unable to do so, up to this time, owing to the fact that the estate of said decedent consists of an interest in the estate of Jacob Older, the administration of which is now pending before your Honor, and is unsettled ; and in a partnership, mentioned in the written application of this respondent for letters upon the estate of said Rich, which application is on file in said Court, and to which this respondent begs your Honor to refer, for further particulars and for greater certainty. This respondent further states, that the assets of said firm are in the hands of A. B., the surviving partner, who is proceeding, as respondent believes, to collect what is due to, and to settle up the debts of the said firm as rapidly as the law, and a due regard to economy will permit.

This respondent further states, that from the best information he can obtain, he is satisfied that the interest of his intestate in the assets of said firm, and in the said estate of said Older, cannot be ascertained, so as to enable him to render even a partial inventory thereof, before the first of July next.

In consideration whereof, this respondent prays, that he may be discharged from the operation of said citation, and from filing any inventory of said estate until the fifth day of July, 18—, and for such other relief as may be agreeable to law, and proper in the premises. And as in duty bound &c.

Subscribed and sworn to, &c.

JOHN JONES.

## [ No. 42. ]

ORDER granting further time to return an INVENTORY.

*Richard Rich, deceased, Estate of, }  
Further time for Inventory. }*

John Jones, the administrator of said estate, having this day appeared, in answer to the citation heretofore issued, requiring him to file an inventory of said estate, and made an answer in writing, and shown cause, in all things satisfactory to the Court, and having, also prayed for time, until the fifth day of July next, to file said inventory, and having shown that it is not probable that he can render such inventory, with any due regard to its completeness or accuracy, before the period mentioned : It is ordered, that further proceeding for want of an inventory of said estate be discontinued, and that said administrator have until July fifth, next, to make and return such inventory, unless it shall appear, in the meantime, that the same can be furnished at an earlier day. It is further ordered, that said answer be recorded.

## [ No. 43. ]

INVENTORY of the Estate of Richard Rich, deceased, viz:

*(As to what the Inventory should contain, see Code § 1724 and 1725, and the following form of affidavit, to be made by the Executor or Administrator :)*

*State of Alabama, }  
Mobile County. }*

Before me, Edwin Rust, Judge of the Probate Court in and for said county and State, personally appeared John Jones, the executor, in said Court, of the will (or, administrator of the estate) of Richard Rich, deceased ; and the said Jones being by me first duly sworn, doth depose and say, that the foregoing inventory of the estate of said decedent, is full and complete, as to the goods and chattels, debts and money of the testator, (or intestate, as the case may be,) which have come to his knowledge or possession.

Subscribed and sworn to, &c.

JOHN JONES.

It will be seen by reference to § 1726 of the Code, that the foregoing affidavit cannot be properly made before any other person than the Judge of Probate. The inventory should be filed before the appraisement is made, as § 1728 requires the appraisers to appraise by the inventory.

## [ No. 44. ]

## APPRAISEMENT of the Estate of Richard Rich, deceased, viz :

(As to what shall compose the items of the appraisement, and the mode in which they shall be set down, see § 1728 of the Code, and the subjoined affidavit, which must be sworn to by the Appraisers :)

State of Alabama, }  
Mobile County. }

Before me, Edwin Rust, Judge of Probate in and for said county and State, personally appeared A. B., C. D. and E. F., who were heretofore duly appointed to appraise the estate of Richard Rich, deceased ; and said appraisers having been by me first duly sworn, respectively depose and say, that they have appraised each article as above stated, and as specified in the inventory, made by the executor of the will (or, by the administrator of the estate) of said decedent, at its true value, and set down opposite to such article, respectively, such value in dollars and cents, in figures.

Subscribed and sworn to before me by A. B. and

C. D., the 10th day of May, 18—.

EDWIN RUST, Judge.

A. B.

C. D.

Subscribed and sworn to before me by E. F. the }

12th day of May, 18—. EDWIN RUST, Judge. }

E. F.

## [ No. 45. ]

DISSENT from a WILL by the WIDOW of the Testator.—Code § 1609, 1610.

State of Alabama, } Probate Court of said County.  
Mobile County. }

To the Honorable Edwin Rust, Judge of said Court :

Mary Rich, the widow of Richard Rich, deceased, whose will has been admitted to probate in your Honorable Court, respectfully represents unto your Honor, that she dissents from the said will of her said late husband ; and that in place of the provisions made for her by said will, she elects to take her dower in the lands of said testator, and of his personal estate, to take such portion thereof as she would have been entitled to had her said husband died intestate.



In witness of which, her said dissent and election, your petitioner prays leave to deposit the foregoing writing with your Honor, and that an entry thereof may be made of record in said Court specifying that this dissent hath been made in writing and deposited as aforesaid, this the fourteenth day of May, 1855. And as in duty bound, &c.

MARY RICH.

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[No. 46.]

RECORD ENTRY showing the DATE of filing the DISSENT.

*Richard Rich, deceased, Estate of,*  
*In a matter relating to his last Will* }  
*and Testament.*

On this fourteenth day of May, 1855, Mary Rich, the widow of said testator, deposited with the Judge of this Court, her written dissent to the said will of her said deceased husband, declaring, in and by said dissent, her determination and election, to take her dower in the lands of her said deceased husband, and of his personal estate, to take such portion thereof as she would have been entitled to in case he had died intestate, in the place and stead of the provisions made for her in and by said will: Therefore, on the motion of said Mary, and in compliance with the prayer of her said dissent: It is ordered by the Court, that said dissent, together with a statement of the day when the same was made, all of which is above set forth, be made a matter of record in this Court.

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[No. 47.]

PETITION FOR DOWER.—Code § 1361.

To the Hon. Edwin Rust, Probate Judge, in and for the County of Mobile and State of Alabama :

The petition of Mary Rich respectfully sheweth unto your Honor, that Richard Rich departed this life intestate, (*or, leaving a last will and testament, if such be the fact,*) about

the — day of —, 18—, and that his estate is now being administered in said Court by John Jones, who is a resident of this county, as the administrator thereof, (*or, as executor of the last will and testament of said decedent, as the case may be:*) That said deceased left him surviving your petitioner, who is his widow, and who resides in this county, and five children, whose names, ages, residences and conditions are respectively as follows, to wit: (*The heirs should be here named in order and described as required in subdivision 3 of § 1361 of the Code.—See the statement of the heirs in the petition to sell lands:*)\* That said Richard Rich died seized and possessed in fee of the lots, pieces and parcels of land described as follows, viz: (*Insert description of land as required in subdivision 1 of § 1361 of the Code.*)

Your petitioner further alleges, that the said Richard Rich, deceased, during the period of petitioner's marriage to him, (*see subdivisions 1, 2 and 3 of § 1354 of the Code,*) was also seized in fee of the lands described as follows, to wit: (*Describe the lands as above directed,*)—which said last named land was aliened and conveyed by the said Richard, in his lifetime, to one Willing Flanders.

Your petitioner further states, that she never relinquished her right to dower in any part of said land, before, during or since said marriage; and alleges, that she is entitled to be endowed of a life estate in one half of said land, (*for the quantity of dower which the widow can lawfully claim in this State, see § 1355, subdivisions 1, 2 and 3 of the Code,*) which dower interest, petitioner charges, can be duly and justly assigned to her by metes and bounds.

Your petitioner, therefore, prays your Honor, that her dower interest in said land may be set off and assigned to

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\* *If there was a will left, a statement should be inserted as follows, viz:* That said Richard left a last will and testament, which has been duly proved and admitted to record in and by said Court; and that your petitioner, in due form and in writing made her dissent from the provisions of said will, and deposited the same with the Judge of said Court within one year from the date when said will was so proved and admitted to record, as aforesaid.

her by metes and bounds, aforesaid; and to that end, and that the same may be in all things accomplished in accordance with the provisions of law in such cases, your petitioner further prays, that such orders and decrees may be made, and such process issued, and other proceedings had as may be requisite in the premises. And as in duty bound, &c.

Subscribed and sworn to, &c.

MARY RICH.

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[ NO. 48. ]

ORDER setting day for HEARING the WIDOW'S PETITION for DOWER.

Code § 1362, 1364.

*Richard Rich, deceased, Estate of, }*  
*In a matter of Dower. }*

This day came Mary Rich, and files her petition in writing, and under oath, alleging, among other things, that she, the said Mary, is the widow of said decedent, and, as such, is entitled to have a life estate assigned her in one half of certain lands, described in said petition, for her dower interest therein, the same being lands of which her said deceased husband was seized in fee during her marriage with him, in and to which she never relinquished her right of dower; and the said land being so situated, that such dower can be set off and justly assigned by metes and bounds; and it not being shown to the Court that the proper notice has been given to those interested adversely to the said widow, in her said claim for dower, of the time when said petition would be filed and an order for the assignment of dower prayed for; and it appearing from an inspection of said petition that the only heirs at law of said deceased, &c.

The remainder of this order, as to the statement of the heirs as well as in other particulars, should conform to the first order made by the Court upon the petition to sell lands to pay debts, (which see) except, that if there are non residents to be made parties, they can be so made by a publication of thirty days, and the citation, to be issued, need only to be served ten days before the day of hearing; and, except, also, that the personal representative is required to be notified.

It is recommended, as a very proper practice, that the guardian *ad litem* should not be appointed until publication has been made and the citation served for a reasonable period, to enable persons interested in the minors to come in and nominate, or to inform the Judge as to who would be a suitable and proper person to act as such guardian. For forms, making such appointment, see a form for a similar purpose on the probate of a will.

## [ No. 49. ]

SUGGESTION of MARRIAGE of WIDOW pending her Application for DOWER.—Code § 2150.

*Richard Rich, deceased, Estate of,* }  
*In the matter of Dower, and sug-* }  
*gesting Marriage of Widow.*

This day comes Mary Rawlings, late Mary Rich, the widow of said decedent, and whose application for dower is now pending in this Court, and suggests to the Court, that since the filing of her said petition she has intermarried with, and is now the wife of John Rawlings, and prays that her said suggestion may be spread upon the records, which is accordingly so done: It is therefore ordered, that the further consideration and determination of the matter of said application for dower do proceed in the said name of said Mary acquired by her said marriage with said Rawlings.

The foregoing form, with such alterations as will suit the change of circumstances, and which will readily occur to the mind of the draftsman, or something similar, should be used for the case of an insolvent estate, where the claimant marries, while her claim is pending, or in case of the death of the claimant, (see Code § 2146,) as, in either case, the judgment of the Court upon the claim must be in some name other than that of the original claimant. This suggestion, however, may be entered along with the judgment allowing the claim, or declaring the dividend, unless some proceeding in matter of the estate, involving the interests of the claimant, becomes necessary prior to such period, such as the taking of testimony.—when the proper parties must be named in the commission,—in which event the foregoing suggestion should be made on the record beforehand.

## [ No. 50. ]

DECREE allowing DOWER and directing COMMISSIONERS to be summoned to make ALLOTMENT of.

*Richard Rich, deceased, Estate of,* }  
*In a matter of Dower.*

18

This being the day regularly appointed for hearing the petition of Mary Rich, praying for an allowance and assignment to her of dower in the lands described as follows, to wit: (*Here describe the land accurately and as set forth and located in the petition*)—and it being now proven to the satisfaction of the Court that the parties in interest, and who

are particularly referred to and designated in the order of this Court entered in the premises, on the — day of —, 18—, (*the date of the order setting day for hearing,*) have, each and all of them, been duly notified of said petition, and that the matter thereof would be this day heard and determined by the Court, by publication, and otherwise, as required by law, and in all particulars strictly according to the directions of said former order; now comes the said Mary Rich, and also comes A. B., who was heretofore on the — day of —, 18—, (*the true date of the order of appointment,*) appointed, and who now appears in open Court, and consents to act as guardian *ad litem*, for said minors, C. D. and E. F., and to protect their interests in this proceeding; and also came John Jones, the personal representative of said deceased in this Court, (*proceed and set out the names of all who appear, whether in proper person or by attorney,*) and said guardian *ad litem* having filed his answer in writing for both of said minors, denying the allegations contained in said petition, on motion of the said Mary, the Court proceeds to hear the proof and to determine the right of said petitioner to dower in the lands above set forth, being the same described in said petition: Whereupon it appears, by due proof, to the satisfaction of the Court, that said petitioner is the widow of said deceased; that the said decedent was seized in fee, during his marriage with the petitioner, of the several parcels of land above referred to, in and to which the petitioner never relinquished her right of dower; that dower in said lands can be justly assigned by metes and bounds; that said decedent departed this life intestate; (*or, that said decedent left a last will and testament which has been duly proved and admitted to record in this Court, from the provisions of which will the said Mary dissented in due form, and in writing, which dissent she duly deposited with the Judge of this Court within one year from the date of the probate of said will;*) that the said estate is entirely solvent, and that said

Richard died leaving no lineal descendants.—(*See Code § 1355.*) It is, therefore, ordered, adjudged and decreed by the Court, that the said Mary Rich is entitled to have an estate for her life set apart for, and allotted to her in one half of all and singular, the lands above described, that portion of said lands being now adjudged by the Court to be her rightful dower interest therein: It is further ordered, for the purpose of carrying the above decree into effect, that the sheriff of this county be directed by a writing, in due form and to him addressed, in the nature of a writ of dower, to summon five freeholders, not connected with any of the parties to this proceeding by consanguinity or affinity, to set off and allot, by metes and bounds, the said dower interest of the said Mary Rich in said land, having regard to the improvements and quality of the land, as well as to the quantity of the dower; and to perform all other duties required of them by law in relation thereto.

It is further ordered, that said petition, and all other papers and proceedings in this case be recorded, to be referred to, if necessary, as part of this decree.

It is further ordered, that said Mary Rich pay all the costs of this proceeding.

If no resistance is made to her claim the widow is not entitled to costs.—11 Ala. R. 21, and see 9 *ibid.* 620-'21.

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[ No. 51. ]

WRIT for the SUMMONS of COMMISSIONERS to allot DOWER.

*State of Alabama,* }  
*Mobile County.* } In the Probate Court.

To the Sheriff of said County:

Whereas, it was decreed by the Probate Court of said county, on the — day of —, 1857, that — —, is entitled to dower in certain lands belonging to the estate of

—— ———, deceased, and lying and being in said county, and which lands are described as follows, viz : (*Here insert description of land.*)

And, whereas, it was decreed, that the said dower is one third portion (*or any other proportion*) of said lands: and, whereas, the said —— ———, the administrator, —— ———, —— ——— and —— ———, minors, are parties to this proceeding and to such decree: You are hereby directed, in pursuance of said decree, to summon five freeholders, not connected with the parties by consanguinity or affinity, to allot and set off by metes and bounds, the said dower, having regard to the improvements and quality of the land, as well as to the quantity of the dower; and such other proceedings to have in relation thereto as are required by law.

And you will due return make of this writ, with your proceedings thereon endorsed, at or before the next term of this Court, to be held on the second Monday of ——, A. D. 1857.

Witness, Edwin Rust, Judge of said Court, at office, this — day of ——, 18—.

EDWIN RUST.

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[ No. 52. ]

SHERIFF'S RETURN to be endorsed on the back of the WRIT of DOWER.

In pursuance of the within writ, to me directed, I this day summoned A. B., C. D., E. F., G. H. and I. K., being five freeholders, who are not connected with the parties named in said writ by consanguinity or affinity, to allot and set off the dower as therein specified; and before they proceeded to assign said dower, I administered an oath to each of them, impartially, and to the best of their skill and ability, to assign the said dower pursuant to the decree referred to in said writ. Witness, my hand, this the — day of ——, 18—.

—— ———, Sheriff, M. C.

[ No. 53. ]

## RETURN OF COMMISSIONERS.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of Probate in and for  
 said County and State :

By virtue of the annexed writ, and the summons of the sheriff of Mobile county, we, the undersigned, five freeholders of said county, not connected with the parties by consanguinity or affinity, having first been duly sworn according to law, did, on this the — day of —, 18—, proceed to assign the dower therein specified according to the decree therein named ; and we do hereby allot and set off, by the following metes and bounds, to the said — —, the following described lands, being one-third portion (*or, whatever other proportion may constitute the dower interest*) of the lands named in said writ and decree, having regard to the improvements and quality of the land, as well as to the quantity of the dower, to wit : (*Here insert a description of the land allotted.*)

In witness of all which, the undersigned commissioners, have hereunto set their hands and seals, the day and year aforesaid.

— —, [SEAL.]  
 — —, [SEAL.]  
 — —, [SEAL.]  
 — —, [SEAL.]  
 — —, [SEAL.]

[ No. 54. ]

DECREE RECORDING proceedings and CONFIRMING return of Commissioners by which DOWER has been allotted.—Code § 1359, et seq.

*Richard Rich, deceased, Estate of,* }  
*In a matter of Dower.* }

Whereas, in pursuance of a decree of this Court, rendered in the premises, on the — day of —, 18—, the following writ was addressed and delivered to the sheriff of this county, on the — day of —, 18—, (*here insert copy of writ.*) And



whereas, the said sheriff did afterwards on the — day of —, 18—, return the said writ with his return thereon endorsed in writing, which is in words and figures following, to wit : *(here insert copy of such return.)* And whereas, said commissioners, named in the said sheriff's return, did on the — day of —, 18—, make the following return of their action in the premises in writing subscribed by them, to the Judge of Probate of this county, to wit : *(copy commissioner's report.)* And said return of said commissioners having been made and filed with the Judge of this Court, on the — day of —, 18—, and which it is adjudged by the Court, leaves a reasonable period of time, before this day, for the filing of any objections or exceptions thereto, if any just cause of exception or objection to said return exists, and no objection or exception of any kind having been taken, filed or in any way made known to the Court, or to the Judge thereof; and the Court, from a full examination of the facts in the case, and after mature deliberation in the premises, being now entirely satisfied that the action of said commissioners in this behalf, and their said return thereof, is just and equitable; and that all matters and things connected with the said allotting and assignment of said dower, from the beginning of this proceeding to the present time, have been fairly and properly managed, conducted and concluded: It is ordered, adjudged and decreed by the Court, that said return, and all other, the proceedings in this matter, be and the same are hereby wholly ratified and fully confirmed; and, as above, the same, together with the said return of said commissioners, are recorded.

## [ No. 55. ]

PETITION OF ADMINISTRATOR GENERAL showing an Estate unadministered.—See Code § 1680.

To the Hon. Edwin Rust, Judge of the Probate Court of Mobile County :

Your petitioner, the general administrator in and for this county, duly appointed by said Court, would respectfully represent, that A. B. departed this life in this county, (*set out any cause giving jurisdiction to the Court, under § 1667 of the Code,*) about three months since, and that the death of the decedent has now been known more than sixty days; (*see Code § 1682*)—that said decedent left property which is (*or, the bulk of which is*) now in this county; that said property is so circumstanced that the same ought to be administered upon, but no administration has been granted thereon, nor has any other person, entitled to administer, applied for letters, so far as your petitioner knows or believes.

Your petitioner further shows, that he does not know whether the deceased left any will, nor who are his next of kin, or other persons, if any, who may be entitled to said estate: (*Of course, the general administrator should set out, in full, any and all information he may have, as to the estate; the heirs thereof, and as to the existence of any testamentary paper.*)

In consideration of all which, the general administrator respectfully suggests, that inquiry into the premises should be made by your Honor, and the proper steps be taken to have said estate administered, and saved from further waste, &c. And as in duty bound, &c.

A. B., General Administrator.

Subscribed and sworn to, &c.

## [ No. 56. ]

GRANT OF LETTERS OF ADMINISTRATION to GENERAL ADMINISTRATOR  
upon his Petition, or by the Court upon its own motion.—Code § 1681.

*A. B., deceased, Estate of,* }  
*Letters to General Administrator.* }

It having been made known to the Court (by the petition and oath of C. D. as the general administrator for this county, *if the Court has been so informed,*) that said A. B. departed this life in this county, and that his death has been known more than sixty days; (*Code § 1682,*) and that no person, entitled to administer upon his estate, has applied for letters of administration; and no other person having been appointed; and the Court being further satisfied, that the interests of those entitled to said estate, requires that administration of the same should be had: It is ordered, adjudged and decreed, that administration upon said estate be, and the same is hereby committed to C. D., in his capacity of administrator general for this county; and, as such administrator, the said C. D. is directed, under this appointment, to proceed with said administration according to law: It is further ordered, (*appoint appraisers as in subsequent forms, and order the petition, if one has been filed, to be recorded.*)

## [ No. 57. ]

PETITION of THIRD PERSON to have ADMINISTRATION cast upon the  
GENERAL ADMINISTRATOR.

To the Hon. Edwin Rust, Judge of the Court of Probate in  
and for the County of Mobile:

The undersigned respectfully represents unto your Honor, that A. B. departed this life on or about the — day of —, 18—, and that his death has been known more than sixty days: (*Here state the jurisdictional facts, see Code § 1667.*)

Your petitioner further states, that no person has administered, or applied for leave to administer, upon said estate, so far as he knows or believes; but your petitioner states, that he is a creditor of said decedent, and that there are other just debts, besides petitioner's, (*if such is the fact,*) existing against said estate, which makes it necessary and proper that letters of administration should be issued to some person, for the purpose of collecting and preserving said estate, as well as the better securing the said debts of the decedent, and for the protection of the interest of his heirs: (*If the heirs are known, state name, and describe them here, with the same particularity as in other cases in which it is necessary to name and describe the heirs.*)

In consideration of the premises, and upon giving the proper bond, your petitioner prays, that the administration of said estate, may be cast upon C. D., in his capacity of general administrator of this county. And as in duty bound,  
&c. E. F.

Subscribed and sworn to, &c.

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[ No. 58: ]

ORDER Committing ADMINISTRATION to the GENERAL ADMINISTRATOR  
upon petition of THIRD PERSONS.—Code § 1691.

A. B., deceased, }  
Estate of         }

This day comes E. F. and makes known by petition, under oath, that said A. B. departed this life in this county; and that his death has been known more than sixty days; that the petitioner is a creditor of said estate; and that the decedent left an estate requiring the care of an administrator. And no person entitled to administer having applied for that purpose, and no other person having been appointed; and the said E. F., having given bond in the sum of two hundred dollars, with a condition, such as the law directs in such

cases, thereunder written, which bond hath been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, &c.: (*Proceed as in other forms appointing the general administrator.*) It is further ordered, that said petition and bond be recorded.

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[ No. 59. ]

PETITION for LETTERS to GENERAL ADMINISTRATOR for a SINGLE purpose.

To the Hon. Edwin Rust, Judge of the Court of Probate of Mobile County :

The petition of A. B. respectfully shows, that he is the lawful holder of a mortgage, for the sum of four hundred dollars, made upon four negroes located in this county, by one C. D., whose death has been known for more than sixty days, he having departed this life in the city of Chicago, in the State of Illinois, on or about the — day of —, 18—, and which negroes were sold by said C. D. in his lifetime, but subsequent to said mortgage.

Your petitioner further states, that said A. B., left no property in this State, so far as he knows, and that no letters of administration have ever been taken out in this State, upon his estate, to the best of this petitioner's knowledge, information and belief. Your petitioner further states, that he is desirous to file a bill in Chancery, to foreclose said mortgage, but he is advised that he cannot obtain the necessary decree, for such foreclosure, without making the administrator of the estate of said decedent a party defendant to said bill: (*Here state the facts as to heirs, as in ordinary cases.*)

In view of the facts stated, and of the manifest necessity in the premises, your petitioner says he is willing to give the bond, required by law in such cases, and therefore prays your Honor, that letters of administration, conferring authority, specially limited to the defence and

management of said contemplated suit or proceeding, and to the proper disposition of the results thereof, may be issued to the general administrator of this county, in his said official capacity, he being totally disinterested, as your petitioner is advised and believes, in the subject matter of said suit. And as in duty bound, &c. A. B.

Subscribed and sworn to, &c.

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[ No. 60. ]

ORDER GRANTING ADMINISTRATION for a SINGLE purpose to GENERAL ADMINISTRATOR.

*C. D., deceased, }*  
*Estate of. }*

This day came A. B., and filed a petition in writing, and under oath, and, also, otherwise proved to the satisfaction of the Court, that C. D. departed this life in the city of Chicago, State of Illinois: that his death has been known more than sixty days: that decedent in his lifetime mortgaged to the petitioner four negroes, who are now in this county, and held by a vendee of said decedent, who purchased since the date of said mortgage: that decedent left no other property in this State, so far as the petitioner believes; and that the petitioner is desirous to foreclose said mortgage, but is advised that he cannot do so without making the personal representative of said decedent a party defendant to his bill; and praying the Court, therefore, to commit a special and limited administration upon said estate to E. F., the general administrator of this county. And said A. B., having given bond, conditioned as required by law in such cases, which bond has been taken and duly approved by the Judge of this Court: It is ordered, adjudged and decreed, that said E. F., as the general administrator of this county, be, and he is hereby appointed administrator of said estate, and that letters of administration be duly issued authorizing him to administer, in his said official capacity, in the affairs of said estate, only so far as pertains to said suit for foreclosure and

to the due disposition, for the interest of said estate, of the proceeds thereof, so far as the same may at any time come into his hand. It is further ordered, that said petition and bond be recorded.

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[ No. 61. ]

BOND to the GENERAL ADMINISTRATOR on committing ADMINISTRATION to him upon application of a THIRD person.—Code § 1691.

*State of Alabama, }*  
*Mobile County. }*

Know all men by these presents, that we, ——— and ———, are held and firmly bound unto Franklin G. Kimball, the general administrator, duly appointed by the Judge of Probate in and for said county and State, and to his successors in said office, who may be appointed to administer upon the estate hereinafter named, in the sum of ——— dollars, for the faithful payment of which sum, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness, our hands and seals, this — day of —, 18—.

The condition of the above obligation is such, that whereas, administration in and upon the estate of ———, deceased, hath been committed to the said general administrator upon the application of said ———, by the Probate Court of said county: Now, therefore, if the above named ———, shall well and truly pay, or cause to be paid, such fees and allowances as may be made by said Court, on such administration, if the property of the estate is insufficient therefor, then this obligation shall be void, otherwise to be and remain in full force and effect.

Approved this, the — day of }  
 —, 18—. }  
       —, Judge. }

——, [SEAL.]  
 ——, [SEAL.]

[ No. 62. ]

PETITION for SPECIAL LETTERS of ADMINISTRATION, under § 1674 of  
the Code.

To the Honorable Edwin Rust, Judge of Probate in and for  
the County of Mobile :

The petition of A. B., who is over the age of twenty-one years, and an inhabitant of this State, respectfully shows, that C. D. departed this life in this county, testate (*or, intestate, as the case may be*) two days since, being the fourteenth day of May, 18—, leaving property in this State, of the value of about ten thousand dollars, and not more, to the best of petitioner's knowledge, information and belief; which property principally consists of accounts, notes, and drafts, matured and running to maturity, and which require that some person should be immediately appointed to take charge of, collect and preserve the same, to prevent unnecessary loss and waste thereof, until such time as letters testamentary (*or, of administration*) can be issued in due course of law, (*or, state any facts which will tend to show that there is necessity, or propriety in the issuance of special letters.*)

And, for as much as your petitioner is interested in said estate, as one of the next of kin of said (*or, as a legatee mentioned in the will of the—or, as a principal creditor of the estate of said*) decedent, and, therefore, naturally solicitous that said estate should be saved from as much loss as possible, your petitioner prays, that he may be permitted to take out special letters upon said estate, upon giving the proper bond and security. And as in duty bound, &c.

Subscribed and sworn to, &c.

A. B.



## [ No. 63. ]

Grant of LETTERS of ADMINISTRATION AD COLLIGENDUM.—Code § 1676.

*A. B., deceased, Estate of, {  
Special Administration. }*

This day comes C. D. and shows to the Court, by his petition, on file, and which is verified by his oath, and also by other evidence, which is satisfactory to the Court, that he is the next of kin (*or*, a legatee mentioned in the will—*or*, a principal creditor of the estate of said) decedent, who departed this life, in this county testate (*or*, intestate, *as the case may be*) two days since ; and that the property of said decedent, which is located in this county, is so circumstanced (*or*, of such a nature) as absolutely to require that some suitable person shall be immediately appointed to take charge thereof, and to collect and preserve the same, until such time as letters in chief shall be issued by the proper, authority, for the full administration of the affairs of said testator (*or*, intestate.) And the Court being satisfied that said C. D. is a suitable person to take charge of said estate for the time being, and he having given the requisite bond and security in the premises, which bond has been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, that letters of administration do forthwith issue to said C. D. upon the estate of the said A. B., authorizing the collection and preservation of the goods of the deceased, until letters testamentary, or of administration have duly issued. It is further ordered, that said A. B. do make and return a proper inventory of said estate; and that E. F., G. H. and I. J. be, and they are hereby appointed to appraise the same, and that they have notice of this appointment. It is further ordered, that said petition be recorded.

[ No. 64. ]

## Ordinary PETITION for LETTERS of ADMINISTRATION.

To the Hon. Edwin Rust, Judge of Probate for the County of Mobile :

The petition of A. B., an inhabitant of this State, and who is upwards of twenty-one years of age,\* respectfully represents unto your Honor, that C. D. departed this life, intestate, on or about the — day of —, 18—, and more than fifteen days since, (*If the applicant comes under the fourth subdivision of § 1668 of the Code, instead of the preceding, here insert the words, said death having been known more than forty days since*) leaving property in this State, to the best of petitioner's knowledge, information and belief, of about the value of ten thousand dollars, and not probably more : That said C. D. was an inhabitant of this county at the time of his death: (*The condition of the intestate, at the time of his death, or of his property, which authorizes the application to the Probate Court of the county, where the petition may be filed, must be stated here, according to § 1667 of the Code.*) That your petitioner is the widow (*or, husband, as the case may be, stating one of the conditions to which is annexed the right to administer.—See Code § 1668.*) That the heirs and distributees of the estate of said decedent, as your petitioner is advised and believes, are as follows, viz: (*Here insert the age, as near as possible, and the name, sex, and residence, and if any of the persons are of unsound mind, or are married women the fact should be stated.*† *If there are others, who are stated to have prior*

\* As to the required age of an administrator, see 17 Ala. R. 126. It is clear that the requirement as to age, should be the same in the case of an administrator as in that of an executor.

† This careful statement, as to the heirs and distributees, in this connection, is not required by any special provision of law; but, it is so manifestly proper that the Court should, in an authentic form, and at the very outset of the administration, be put in full possession of the names, ages, sex, residence and condition of those persons who are most interested in the subject of the petition, so that they may be communicated with by the Judge, or by other persons who may be interested for them, that there can be no doubt as to the propriety of the Judge always exacting a rigid adherence to the requirements laid down in the form. In cases where the next of kin apply, this course would seem to be absolutely necessary, as there may be several, of the same

*claims to administer, proceed here as follows, viz : that said, naming the person, declined to administer upon said estate, as will appear by the annexed certificate, and have requested that your petitioner should be appointed to that trust.)*

In consideration of the premises, your petitioner respectfully suggests to your Honor, that he is by law entitled to administer said estate, and prays your Honor that such steps may be taken, and such orders and decrees made, as may be deemed necessary and proper to secure the appointment of your petitioner to that trust, according to law, and upon his giving the requisite bond and security. And as in duty, &c.

Subscribed and sworn to, &c.

A. B.

[ No. 65. ]

Order GRANTING LETTERS of ADMINISTRATION and appointing APPRAISERS, &c.

*A. B. deceased, Estate of, }  
Letters of Administration. }*

This day comes C. D. and files his application, in writing and under oath, praying to be appointed to the administration of said estate, alleging in his said petition, that he is the husband (*or, wife, or, any other cause which entitles the applicant to administer—See Code § 1668,*) of said decedent, who

degree of kindred, entitled to the administration, in which case, the matter of preference is submitted to the discretion of the Judge; (see Code § 1670, 1672) and, unless he is fully informed in the premises, as contemplated by the form, it is plain that he would not be able to call in the next of kin, or to exercise an enlightened discretion.

If the petition shows that there are other kindred of the same degree, or that there are any other claims, equal or prior to those of the petitioner, and that those who have such claims are inhabitants of the State, and are over the age of twenty-one years, unless such persons relinquish all right, the Judge should order a citation for them to appear, on a named day, if they see fit, to show cause why the prayer of the petitioner should not be granted. When, therefore, such is the case, the petitioner should, to save time and expense, procure the consent, according to law, of those who have such right to administer.—See Code § 1674. The form of renunciation, used by an executor, (to be found under the proper head) of his right to execute a will may be referred to, for aid in drafting such consent, as the purpose sought to be expressed, viz : renunciation, is the same in the one case as in the other.

was an inhabitant of this State at the time of her death ; that she departed this life in this county, (*or see Code § 1667,*) intestate more than fifteen days since, (*if the applicant is such person as is referred to in subdivision 4 of § 1668 of the Code in the place of the time last mentioned use the following language, viz:* and that her death has been known more than forty days) leaving property in this State of about the value of ten thousand dollars, and probably not more, to the best of petitioner's knowledge, information and belief; and also showing, in and by said petition, who are the heirs and next of kin of said deceased and their respective ages, sex, condition and residence, so far as he knows. And it being shown by evidence, satisfactory to the Court, that the allegations of said petition are substantially true ; (*If it should appear that there are others having equal or superior claims to the administration, the applicant should produce a renunciation of the right, and the recital would then proceed as follows, viz:* and it being duly made to appear to the Court that said—*naming them*,—have declined to administer upon said estate,) and said C. D. having given bond in the sum of twenty thousand dollars, with E. F. and G. H. as his sureties therein, which bond, with such securities therein, has been duly taken and approved, as good and sufficient, by the Judge of this Court : It is ordered, adjudged and decreed, that said C. D. be, and he is hereby appointed to administer said estate, and that the proper letters of administration do issue to him forthwith. It is further ordered, that an appraisement of said estate be made; that I. J., L. M. and O. P., be, and they are hereby appointed and authorized to appraise said estate, and that they have due notice of this appointment. It is further ordered, that said petition be recorded.

[ No. 66. ]

PETITION of ADMINISTRATOR AD COLLIGENDUM for SETTLEMENT of  
his ACCOUNTS.—Code § 1679 ; also, § 1876, et seq.\*

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court:

The petition of C. D., who was heretofore duly appointed by said Court, as special administrator of the estate of A. B., deceased, for the collection and preservation of his goods, &c., respectfully represents unto your Honor, that his authority, as such special administrator, hath now ceased, by the due appointment, in and by said Court, of John Jones, to be the administrator in chief in and upon said estate; by reason whereof, as petitioner is advised, it has become his duty to render an account, under oath, to said Court, of all his actings and doings in the premises, and, on demand, to deliver to the said John Jones all the assets of the deceased, which may be in his hands: And being ready and anxious to comply with the law in that behalf, your petitioner herewith files his accounts, vouchers and all the written evidences he has, showing the various sums which he has collected on account of said estate, and from what source each collection has been realized; and also showing what amounts have been expended by the petitioner; the latter, consisting entirely of expenses of administration; money paid for the collection and preservation of property of the estate; for taxes assessed before the death of the deceased, and which it was necessary to pay; and for funeral expenses, and expenses of the last

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\* If the special administrator fails, for one month, to come in, of course he may be proceeded against, the same as any other representative, and be forced to settle under § 1876. It is because he can be so forced, that the author has thought it clear that he has the right to come in and demand a settlement, the same as any other representative, except that his settlement is to be made with his successor, and not with the heirs, as parties.

sickness of the deceased; for all of which expenditures, your petitioner prays an allowance.—(*Code* § 1876.)

Your petitioner further states, that the slave Bill, mentioned in his inventory of said estate, which is on file, has sickened and died since his administration, and without any fault or negligence on the part of your petitioner.

Your petitioner states, that he is ready, on demand, to deliver to the said John Jones all the assets of the deceased, which may have come into his hands at any time, save and excepting the said boy Bill.

Your petitioner prays, that a day may be set for making settlement of his said accounts, and that said Jones may have due notice of the time so set, in order that he may contest such settlement, if he shall think proper, and so that your petitioner may be duly discharged. And as in duty bound, &c.

C. D.

Subscribed and sworn to, &c.

[ No. 67. ]

# ACCOUNT of Special ADMINISTRATOR for Final SETTLEMENT.

C. D., Administrator, for collection, &c., in Account with the Estate of A. B. deceased.

DR.		CR.	No. of voucher.
1856.	1856.		
May 2—To amount of money found in Bank.....	\$300 00	April 28—By amount paid fees obtaining letters and other proceedings had.....	1 \$11 10
June 5—To amount of wages boy Jack for three months, ending on 1st day of May instant,	45 00	May 2—By amount storage on goods paid Hal- len .....	2 4 25
June 10—To amount of proceeds of judgment in City Court, dated June 4, 1856, favor of ac- countant, and against Jonathan Dowell..	462 19	May 30—By amount fees obtaining order to sell certain goods as perishable.....	3 2 42
July 19—To amount paid by Abel Sortle, surviving partner, on account of interest of deceas- ed in the late firm of Abel Sortle & Co., 1,000 00		July 1—By amount funeral expenses.....	4 42 50
		July 15—By amount Dr. Allbrains, medical at- tendence during last illness.....	5 75 00
		July 16—By amount paid nurses for do.....	6 12 00
		Aug. 2—By amount medicine—prescriptions... assessed prior to his death, required to be paid to save estate from sale, &c.....	7 8 14
		Aug. 10—By amount taxes on estate of deceased to be paid to save estate from sale, &c.....	8 92 11
Total receipts.....	\$1,807 19	Total disbursements.....	\$247 52

82  
32

## [ No. 68. ]

ORDER setting day for SETTLEMENT of ACCOUNTS of SPECIAL ADMINISTRATOR, and that Administrator in chief have notice.

*A. B., deceased, Estate of, }*  
*As to Special Administrator. }*

This day comes C. D., who was heretofore duly appointed by this Court to be the special administrator of said estate, and for the collection and preservation thereof, and files his statements, accounts, vouchers and evidences, and prays a settlement of the same, and that John Jones, the present administrator in chief upon said estate, may have notice of the day set for such settlement. And the Court having examined, stated and reported said account for settlement: It is ordered, that the — day of —, 18—, be set for making such settlement, and that John Jones, the present administrator, have notice by citation,\* to be personally served on him, of the filing of said statement, account, &c., and of the time set for the said settlement.

## [ No. 69. ]

DECREE on the ACCOUNT of a Special ADMINISTRATOR, and JUDGMENT for balance in favor of his successor.

*A. B., deceased, Estate of, }*  
*Special Administrator's Accounts, &c. }*

This being the day set for making a final settlement of the accounts of C. D., as special administrator of said estate, now comes the said C. D. and moves the Court to proceed with such settlement; and it being shown to the satisfaction of the Court, that John Jones, the present administrator of said estate, hath had due notice, in all respects as required by the order of this Court entered on the — day of —,

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\* *The citation in this case would be as follows, viz:* to show cause, if any there be, why the amounts of C. D., as administrator ad colligendum, of the estate of A. B., deceased, should not be finally passed and allowed, as the same have been heretofore examined, stated and reported by the Court for final settlement, now remaining on file.



18—, the Court proceeds with such settlement. Whereupon, it appearing to the Court, by due proof, that Bill, a male slave, heretofore the property of said estate, hath departed this life, during the administration of the said C. D., but without any fault on his part, and that all other assets of said deceased, mentioned in the inventory filed by the said C. D., as such administrator, or which have been otherwise shown to have come into his hands at any time, have been, by him, on demand, promptly delivered to the said Jones: And it also appearing by due proof to the Court, that the said C. D. hath received of the assets of said estate, the sum of eighteen hundred and seven and nineteen one-hundredths dollars in money, and that he has justly and properly expended, in and about his said administration, and in liquidation of the other preferred claims, in their proper order, for all of which expenditures the proper vouchers are on file,—the sum of two hundred and forty-seven and fifty-two one-hundredths dollars, which now leaves in his hands, in money, the sum of fifteen hundred and fifty-nine and sixty-seven one-hundredths dollars: It is ordered and decreed, that said account as herein above stated be, and the same is hereby passed and allowed; and that the said C. D. is not chargeable with the value of said slave Bill, or any part thereof.

On motion of said Jones, it is further ordered, that said C. D. do pay to said Jones the said sum or balance of fifteen hundred and fifty-nine and sixty-seven one-hundredths dollars, within five days from this day, or that execution issue therefor in favor of said Jones, as such administrator, and against the said C. D.

[ No. 70. ]

**PETITION of ADMINISTRATOR GENERAL for FEES and ALLOWANCES, to be made by the Court, to be collected from the BONDSMEN upon whose application he was APPOINTED.—Code § 1691.**

*State of Alabama, }*  
*Mobile County. }*

To the Hon. Edwin Rust, Judge of the Probate Court of said County :

The petition of E. F., the general administrator for said county, respectfully sheweth unto your Honor, that on the — day of —, 18—, upon the application of A. B., letters of administration upon the estate of C. D., deceased, were duly issued to him, in and by the order and decree of said Court, authorizing him to administer, in his said official capacity, in the affairs of said estate, only so far, however, as pertained to a foreclosure suit, then to be brought by said A. B., as the mortgagee of four negroes, in a mortgage made by the deceased in his lifetime, against G. H., who became the purchaser of said negroes, and your petitioner, as such representative of the said decedent.

Your petitioner further states, that the said object of his administration has been accomplished, said foreclosure having been effected, and the negroes sold, and the costs of said suit having been paid.

Your petitioner further states, that when said administration was committed to him, upon said application, said A. B. entered into bond with L. M. as his security therein, the condition of which bond is, that it shall be void in case said A. B. pays the fees and allowances which may be made, on said administration, by said Probate Court, if the property of the estate is insufficient therefor, otherwise to be in full force and effect.

Your petitioner further states, that no property of said estate, in this State, has ever come to his knowledge or

possession; that he knows of no cause or reason why his administration should be longer continued or a more general one granted, and, therefore, he now resigns his said trust, and prays your Honor for a reasonable allowance for his trouble, risk and responsibility, (*Code* § 1825) to be paid, together with the fees and expenses of his said administration, by the said A. B. the principal in said bond, and L. M. his security.

Wherefore, your petitioner prays your Honor, to set a day to hear this, his petition, and that the said A. B. and L. M. may be duly cited to show cause, if any they may have, why they should not be required, by the decree of said Court, to pay such fees and allowances as may be made in the premises, by said Court, according to the said condition of said bond. And as in duty bound, &c. E. F.

Subscribed and sworn to, &c.

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[ No. 71. ]

ORDER SETTING DAY to hear petition of GENERAL ADMINISTRATOR for an ALLOWANCE and FEES to be paid by his BONDSMEN.

*C. D., deceased, Estate of,* }  
*As to allowance to Administrator.* }

E. F., the administrator general of this county, having been heretofore appointed, upon the application of A. B., and authorized by this Court, for a special purpose, to administer upon said estate, the said E. F. now comes and files his petition, under oath, in which he alleges, among other things, that the object of his administration has been completed; that no property of said estate in this State, has ever come to his knowledge or possession; that he knows of no reason why his administration should be longer continued, nor why a more general administration should be authorized, and therefore resigns his said trust, and prays an allowance to

him, as such administrator, to be decreed by this Court to be paid, together with the fees attendant upon his administration, by said A. B. the principal, and L. M. the security in the bond given for that purpose at the time of the grant of said letters, in accordance with the provisions of section 1691 of the Code of Alabama: It is therefore ordered, that the matter of said petition be set for hearing on the — day of —, 18—, and that said A. B. and L. M. be notified of the filing of said petition, of the said day set for hearing the same, and required to show cause, if any they have, why the said prayer of the petitioner should not be granted.

CITATION UPON THE FOREGOING ORDER.—*The citation would be, "to cite A. B. and L. M., as the obligors in a bond payable to E. F. the administrator general of this county, as special administrator of the estate of C. D., deceased,"—and would require them—"to show cause, if any they have, why the fees of said E. F. incurred by him as special administrator of the estate of C. D., deceased, should not be taxed and assessed, by the Court, with a reasonable allowance to him for his trouble, risk and responsibility as such administrator, and be then decreed, by the judgment of said Court, to be paid by them, the said A. B. and L. M. in accordance with the condition of said bond, and prayer of the petition now on file."*

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[ No. 72. ]

ORDER making allowance to ADMINISTRATOR GENERAL and for FEES, to be paid by BONDSMEN when the property of the Estate is insufficient therefor.

*C. D., deceased, Estate of,        }*  
*Allowance, &c. to Administrator. }*

This being the day appointed, by an order of Court, entered on the — day of —, 18—, in this estate, to hear and determine upon the petition of E. F. the general administrator of this county, filed by him as special administrator of said estate, now comes the said E. F. and moves the Court to proceed with the hearing of said petition, and also comes A. B. and L. M., (*or, if they do not appear, proceed as follows, viz:* and it appearing to the Court, from an inspection of the papers on file, that A. B. and L. M. have had due notice, by citation personally served on each of them, of the

filing of said petition, and that the same was this day to be heard and determined by the Court,) and the Court thereupon proceeds to hear the matter of said petition. And it appearing to the satisfaction of the Court, from competent evidence, that said E. F. was appointed by this Court to such administration, upon the application of said A. B., that said A. B., when the letters of administration were granted to said E. F., gave bond in the sum of two hundred dollars, with the said L. M. as the security therein, which bond was duly approved by the Judge of this Court, and is now on file, and is to be void upon the condition, that said A. B. shall pay the fees and allowances which may be made by this Court, on said administration, if the property of the estate is insufficient therefor, and otherwise is to remain in full force and effect; and the Court being farther satisfied from the evidence, that the property of said estate is totally insufficient to pay such fees and allowances as may be ascertained and made by the Court, on said administration, or any part thereof. And the Court having also heard proof as to the trouble, risk and responsibility, and as to the actual and proper expenses of said E. F. in and about said administration, is of opinion that the sum of fifty dollars is no more than a fair and just compensation to be allowed him in that behalf; and that said A. B. and L. M., by reason of the said condition of said bond, and of said proof, are liable and obligated to pay the same, together with all costs due the officers of this Court, on account of said administration: It is ordered, adjudged and decreed, that said E. F. do have and recover, in the premises, of and from said A. B., and L. M. the said sum of fifty dollars, to be levied of the goods and chattels, lands and tenements of said A. B. and L. M. It is further ordered, that the said A. B. and L. M. do pay the officers of this Court for fees due, on account of said administration, the sum of fourteen twenty-two one-hundredths dollars. It is further ordered, that executions issue to collect said several sums of money, unless the same shall be paid within twenty days from this day.

[ No. 73. ]

PETITION for AUTHORITY to KEEP THE ESTATE TOGETHER, by EX-  
ECUTOR or ADMINISTRATOR.—Code § 1902.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The petition of John Jonte, respectfully shows unto your Honor, that it is now eighteen months (*or any other period*) since he qualified, in said Court, as the administrator of the estate of the late William Wall, deceased; that during his said administration he has been active in the endeavor to collect in the assets for the purpose of paying the debts of said estate, and intending to make as early a close of his said administration as possible; and your petitioner now reports that he has collected all the debts due the estate, except one for fifteen thousand dollars due from one Oliver Pinch, who refuses to pay the same, but who is willing, and your petitioner thinks is able to give him ample security for the larger portion of the debt, if he can obtain an extension of the time for payment. Your petitioner further states, that, as the claim now stands, he does not believe it can be collected without loss, and is of opinion that it will become his duty to apply to your Honor, under the statute in such case made, for leave to make a compromise of the same, and to grant an extension of the time of payment, in accordance with the wish of said Pinch. And, in the event that your Honor should adjudge it for the interest of said estate, to authorize such a compromise, it would then become impossible to settle said estate for several years.

Your petitioner further states, that there is a debt for ten thousand dollars, due from the estate to one Allen Gride, which will mature and become due on the tenth day of July, 1860, of which debt the said Gride refuses to receive payment, unless the full amount be paid without any deductions for interest. Your petitioner further states, that, in his

opinion, there is no necessity for an immediate division of said estate, but, on the contrary, says that the heirs of said estate are minors, who would have to be put under guardians, whose management, of each separate estate, would amount to but a trifle less than what it now costs to manage the whole together. Your petitioner further states, that he thinks he can show that said estate can be made much more profitable, if kept together, than it can be if the same is now distributed.

Wherefore, your petitioner prays, that he may be permitted to verify the allegations in this, his petition, contained, by proof, to be made in such manner as your Honor shall direct and appoint, and that thereupon your Honor will be pleased to order and authorize your petitioner to keep said estate together until the twenty-third day of November, 1861, that being the time when James Wall, the eldest son and heir of said decedent, will attain his majority ;\* and that your Honor will be pleased to enter such orders and decrees in the premises, as may be necessary or proper to carry into effect the object of your petitioner. And as in duty bound, &c.

JOHN JONTE.

Subscribed and sworn to, &c.

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[ NO. 74. ]

ORDER AUTHORIZING ADMINISTRATOR or EXECUTOR to keep an ESTATE together.

*William Wall, deceased, Estate of, }*  
*Leave to keep it together. }*

This day came John Jonte, the administrator of said estate, and files his application in writing, and under oath, asking for authority to keep said estate together, until November twenty-third, 1861 ; that being the day when James

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\* It would hardly be proper, unless the case made by the petition were very special, for a Judge to order an estate to be kept together beyond the period when the oldest minor heir shall attain majority. Then, the adult consenting, it might be kept together until the next in years shall become of age, and so on as long as it may be shown to be proper.

Wall, the oldest son, and one of the distributees of said estate, will attain his majority. And, proof having been submitted to the Court, in support of the allegations of said petition, which fully shows, to the satisfaction of the Court, that the statements in such petition are true; that distribution can not now be made without detriment to said estate; that it will really be for the interest of the distributees that the prayer of said applicant should be granted, and that there is no present necessity for a division of said estate: It is ordered, adjudged and decreed, that said John Jonte, as such administrator, be, and he is hereby authorized to keep together, the real and personal property belonging to the estate of said William Wall, deceased, until the twenty-third day of November, 1861, to be cared for and managed, in the meantime, by said administrator, as the law permits and requires in such cases.

It is further ordered, that said application, filed in this proceeding, be recorded.

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[ No. 75. ]

PETITION to INVEST ACCUMULATIONS of an ESTATE, under the fourth clause of the first section of an Act passed in 1851-'2, Pamphlet Acts, page 86.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of Probate of said County:

The petition of John Jonte, administrator of the estate of William Wall, deceased, respectfully shows unto your Honor, that, by a decree of said Court, rendered on the — day of —, 18—, he was authorized to keep together, the real and personal property of said estate, until November twenty-third, 1861. Your petitioner further shows unto your Honor, that since such authority, as aforesaid, was granted to him, the brick building, occupied as a store, being No. —, on



Water street, in the city of Mobile, has been consumed by fire ; that said number is a good location, and one which has hitherto brought, and which, in the future, will be likely to command a high rent, with choice tenants, provided the edifice shall be rebuilt ; and that if said lot is permitted to remain vacant, it will be an actual expense to said estate, instead of bringing in a good income.

Your petitioner further states, that said building was insured for the sum of seven thousand dollars, at the time it was so burned ; that said insurance money has been duly paid to him, so that petitioner now says, he has, accumulated in his hands, the sum of ten thousand dollars, in money, belonging to said estate, not required, as petitioner feels well assured, for the use of the estate.

Your petitioner further states, that if said money shall be expended in such rebuilding, the money thus reinvested will realize more to the estate than if laid out or invested in any other way ; and that it will be to the interest of said estate, and of those ultimately to receive the same, that said money should be thus invested.\*

All which allegations being duly proved, by such testimony, and in such manner, as your Honor shall require, your petitioner prays your Honor, to order said moneys to be invested in real estate, by the purchase and rebuilding of the store, on the premises aforesaid. And as in duty bound, &c.

JOHN JONTE.

Subscribed and sworn to, &c.

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\* Here state, with particularity, the names, ages, residences and conditions of the heirs, respectively. For a precedent, as to his heirs, see the petition for the sale of land to pay debts.

[ No. 76. ]

## ORDER SETTING DAY to hear Petition to invest ACCUMULATIONS of an ESTATE.

*William Wall, deceased,* }  
*Estate of.* }

This day comes John Jonte, administrator of said estate, and who has been authorized, by a former decree of this Court, to keep said estate together for a term of time not yet elapsed, and files his petition, in writing, and under oath, for an order to invest the money of said estate which has now accumulated in his hands, in real estate, by the purchase or rebuilding of a certain store, belonging to said estate, which has recently been destroyed by fire; and alleging in said application that said money will not be required for the use of said estate; that if said store is not so purchased or rebuilt, said property will be an actual expense, instead of a source of income to said estate; that if said store is replaced, as prayed for, the money thus invested will realize more to the estate than if laid out or invested in any other way; and, that it will be to the interest of the estate, and to the interest of those ultimately to receive the same, that said money should be thus invested; and it appearing to the Court, that the heirs at law of said deceased—(*Here state the names, &c., of the various heirs, precisely as the same occur in the petition.*) It is ordered, adjudged and decreed, by the Court, that said petition be set down for a hearing on the — day of —, 18—, (*not less than forty days distant,*) and that notice of said petition, and of this order, be given by service of citation, &c.—(*here follow the form of the order setting day to hear petition for the sale of land to pay debts, except, that in cases where notice to parties in interest is to be sent out of the State, you will say,* and by sending said paper—*meaning the paper containing the advertisement*—by mail, post paid, containing said publication, with black lines drawn around the notice, within five days from this day, directed to

—the minor, if over fourteen, if under fourteen then to—A. B., at ———, in the State of ———, he being the person who has the charge of said minor, requiring said parties, so served and notified, to appear and answer said petition.\*

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[ No. 77. ]

ORDER authorizing INVESTMENT of ACCUMULATED MONEY of an Estate to be kept together.

*William Wall, deceased, Estate of, }  
Order for Investment. }*

This being the day appointed by this Court, more than forty days since, for hearing the petition of John Jonte, administrator of said estate, and who has been authorized by a former decree to keep said estate together until November twenty-third, 1861, for an order to invest the money of said estate, which has now accumulated in his hands, in real estate, in the rebuilding or purchase of a store, for said estate, in the place and location of the one upon the premises described in said petition, which was the property of said estate, when it was recently destroyed by fire ; now comes the said administrator, and moves the Court, that his said petition be granted, and also comes George W. Bond, who has heretofore appointed by this Court to be the guardian *ad litem* for (*naming the minors, or persons of unsound mind,*) minors and children of said deceased, who is not of kin to said petitioner, and who has filed an answer in writing, denying the allegations of said petition. And it appearing, by due proof to the Court, that due notice of said petition, and of the time and place of hearing the same, has been given to all persons named in said petition, and who are interested in this proceeding, in all respects as required by law, and in

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\* As soon as citations have been served and the four weeks publication has elapsed, the Court should appoint a guardian *ad litem*, see act sec. 4. For form see appointment for minors on proceeding to probate a will, being careful however, to state in the order of appointment that the guardian *ad litem* is not of kin to the petitioner.

strict accordance with the former orders of Court, entered in this proceeding ; and the allegations contained in said petition having been proven, to the satisfaction of the Court, by the testimony of A. B. and C. D., who are " creditable " persons, and disinterested witnesses in this cause ; and whose testimony has been taken, as in Chancery cases, and filed with the papers in this case : It is therefore ordered, adjudged and decreed by the Court, that said administrator be, and he is hereby authorized and directed to invest the said money of said estate, or so much thereof as may be required for the purpose, as designated in his said petition, in the rebuilding or purchase of a store for said estate, in the place and location of the one which was recently destroyed by fire, situated at No. —, on Water street, in the city of Mobile, and that he have said property rebuilt and replaced in a substantial and economical manner, and make report to this Court how he has executed this decree, at as early a day as possible. It is further ordered, that said administrator pay the costs of this proceeding out of the effects of said deceased ; and that said petition, together with said testimony, and all other papers and writings on file, relating to this proceeding, be recorded.

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[ No. 78. ]

REPORT of an Administrator showing an INVESTMENT, &c.

*State of Alabama, }*  
*Mobile County. }*

To the Hon. Edwin Rust, Judge of the Probate Court in  
 and for said County and State :

John Jonte, the administrator of the estate of William Wall, deceased, who was, by the order and decree of this Court, made and entered on the — day of —, 18—, duly authorized to invest certain moneys of said estate, which had, before that day, accumulated in his hands, in the rebuilding

or purchase of a store, at No. —, Water street, in the city of Mobile, in place of the one which had belonged to said estate, and which had then recently been destroyed by fire, having complied with the terms of said order and decree, by purchasing the rebuilding of said store, in as economical a manner as was compatible with the erection of a substantial and durable edifice, now herewith files, for the inspection and judgment of your Honor, a statement or account showing all the items of disbursements, by him, for and on account of such investment; from which account it will be seen that said investment amounts, in the aggregate, to the sum of nine thousand dollars—the vouchers for which expenditures, will be produced and filed with your Honor, for proof and allowance, at the next annual settlement of said estate.

All of which is respectfully submitted to your Honor for examination, and so that the same may be recorded.

JOHN JONTE.

Subscribed and sworn to, &c.

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[ No. 79. ]

ENTRY ORDERING RECORD of the REPORT of INVESTMENT by an  
Administrator.

*William Wall, deceased,* }  
*Estate of.* }

This day came John Jonte, and filed his report, in writing, and under oath, setting forth that he has complied with the decree of this Court, made on the — day of —, 18—, as to the investment of certain money of said estate; and said report having been examined by the Court, and being found apparently correct: It is ordered, that the same be filed and recorded, and that the items of the account, accompanying said report, remain open for future proof and further investigation.

[ No. 80. ]

PETITION for leave to COMPROMISE CLAIM.—See Pamphlet Acts session 1855-'56, No. 23, page 15.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The petition of John Jones, who is the administrator of the estate (*or*, executor of the last will and testament) of Richard Jones, deceased, respectfully shows : That said estate has a debt or claim, supposed by petitioner to be due to it from John Johnston, for the sum of ——— dollars, which petitioner verily believes should be classed as bad, (*or*, doubtful, *as the case may be*,) because the same is barred by the statute of limitations : (*or*, the witnesses by whom only the same can be proved are dead—*or*, gone to parts unknown—*or*, is not susceptible of definite legal proof—*or from any other cause*.) That petitioner believes he can compromise said claim, if authority should be granted to him for that purpose, for the sum of about ——— dollars, which he considers would be fair and equitable ; and petitioner further states, that it will be to the interest of said estate, as he verily believes, that said claim should be so compromised and settled.

In consideration of all which, and of the proofs to be submitted to the Court, in the premises, at such time as may be appointed by your Honor for the hearing of this application, your petitioner prays that such orders and decrees may be made, and such proceedings had as may be necessary and proper to authorize him to settle or compromise said claim according to law. And as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

## [ No. 81. ]

ORDER SETTING DAY for HEARING Petition for leave to COMPROMISE  
CLAIM.

*Richard Jones, deceased, Estate of, }*  
*As to Compromise.*

This day came John Jones, administrator of the estate (or, administrator with the will annexed—or, administrator *de bonis non*—or, executor of the last will and testament) of said deceased, and whose letters were granted by this Court, and filed his application in writing and under oath, setting forth, among other things, that said estate has a claim or debt supposed by him to be due to it from John Johnston, for the sum of ——— dollars, which petitioner verily believes should be classed as bad, (*or, doubtful, as the case may be,*) because the same is (*here set out the fact or facts alleged in the petition.*) That he believes he can settle and compromise the same, if authority should be granted to him for that purpose, for about ——— dollars, which he considers would be fair and equitable, and, verily believes, would be to the interest of the estate; and praying that such proceedings may be had as may be necessary and proper to authorize him to compromise or settle said claim: It is therefore ordered by the Court, that the matter of said application be set for a hearing on the — day of —, 18—, and that notice of the same, and of this order, be given, by publication, for three successive weeks, in the ———, a newspaper published in this county.

## [ No. 82. ]

FORM of NOTICE to be published, or posted, as the law directs.

*State of Alabama,* } Probate Court, — —, 18—.  
*Mobile County.* }

*Richard Jones, deceased,* } This day came John Jones, ad-  
*Estate of,* } ministrator of said estate, and  
 filed his application for an order authorizing him to compromise and settle a claim held by said estate against John Johnston, in accordance with the provisions of an act of the Legislature of Alabama, approved February 1st, 1856: It is ordered, that the — day of —, 18—, be appointed a day for hearing the matter of said application, at which time parties in interest can appear and contest the same if they think proper.

EDWIN RUST, Judge.

## [ No. 83. ]

FINAL ORDER granting leave to COMPROMISE.

*Richard Jones, deceased, Estate of,* }  
*Order to Compromise.* }

This being the day appointed by the former order of this Court, made and entered on the — day of —, 18—, for hearing the application of John Jones, filed in this Court by him, as administrator of said estate, praying for leave to compromise or settle a certain claim or debt, supposed by him to be due to said estate from John Johnston, mentioned and described in said application and in said former order; now comes the said administrator, and moves the Court that said application be granted. And it appearing to the satisfaction of the Court, from the proofs now made and submitted, that notice of said application, and of the time of this hearing, has been given, in all respects as required by said former order: That said claim is bad, (*or, doubtful, as the case may be,*) by reason of the fact that the same is (*here state the fact or facts proven, as nearly in the language of the*



*petition as the testimony will admit*)—that said administrator (*or, executor*) can obtain, in compromise of said claim, the sum of ——— dollars, and probably not more, and that it will be to the interest of said estate to have said claim compromised and settled for that sum : It is ordered, adjudged and decreed by the Court, that said application be, and the same hereby is granted, and the said administrator (*or executor*) is hereby authorized and empowered to settle or compromise said claim for the said sum of ——— dollars ; and, upon the payment of said sum, to give a full discharge and acquittance of and for the same : It is further ordered, that said administrator (*or, executor*) pay the costs of this proceeding out of the funds of said estate.

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[ No. 84. ]

PETITION to sell PERISHABLE or WASTING PROPERTY, under Act of 1853-'4.—See Pamphlet Acts, page 45-'6.

*State of Alabama, }*  
*Mobile County. }*

To the Honorable Edwin Rust, Judge of Probate of said County :

The petition of John Jones, respectfully sheweth unto your Honor, that he was duly appointed by this honorable Court to the administration of the estate of Richard Rich, deceased, on the tenth instant ; and that he immediately proceeded to examine, and to take possession of the assets of said estate, and that he has had the same inventoried, appraised and returned to this Court, as the law directs, (*or, if the inventory and appraisement have not been returned, state the fact, and the cause why—such as the want of sufficient time—or, any other reason, and state that the articles to be sold will be appraised before the day which may be fixed for the sale,*) in the course of which examination the petitioner found that said estate was possessed of—(*here state the denomination and character of the property*)—which property is of a perishable nature—

(or, is liable to waste) in this, that—(*here state the situation of the property, or the facts relied upon as grounds or reasons for the sale, and going to show that said property is perishable, or liable to waste.*)

In consideration of all which your petitioner states, that it is manifest that it will be “beneficial to the interests” of said estate to have said property sold at as early a day as possible.

Wherefore, your petitioner prays your Honor, to take cognizance of the subject matter of this petition, and to order the sale of said property, and that said sale may be made at as early a day as possible, inasmuch as the said property is perishing (*or, wasting*) every day, to the detriment and loss of said estate.

Your petitioner would respectfully suggest to your Honor, inasmuch as said property is not of any great value, and because the same will have to be sold in small quantities, to suit purchasers, that it would be best that the same should be ordered to be sold for cash.\* And as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

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[ No. 85. ]

ORDER for the Sale of PROPERTY liable to WASTE, or perishable.—See Acts 1853-'4, page 45-'6, Code § 1678.

*Richard Rich, deceased, Estate of,* }  
*For the sale of perishable (or, wasting) property.* }

This day came John Jones, administrator of said estate, and filed his petition, in writing and under oath, praying for an order to sell (*state what the property is, &c.*) upon the

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\* Of course, the statements and suggestions, contained in this paragraph, must be varied to suit each case. Indeed, the whole of the foregoing petition can only be considered as in the light of suggestions as to the proper mode of proceeding necessary to obtain an order for the sale of property which is wasting, or of a perishable nature. This form, and the next succeeding order, will answer for any proceeding under § 1678 of the Code, except that under this latter provision the sale must be advertised for the same length of time as other sales of personal property.

ground that the same is perishable ; (*or*, is liable to waste,) and the Court having read said petition, and heard the proof adduced in support thereof, and being satisfied that said petition is fully sustained by the said evidence, and that said property is perishable, (*or*, liable to waste,) and that it will be “beneficial to the interests” of said estate that the same should be sold, and at as early a day as may be, in accordance with the prayer of said petition, (and after the same shall have been appraised, *if not already appraised* :) It is ordered and decreed, that said property be put up and sold, in front of the Court house in this county, in such lots and parcels as said administrator may think most advisable, and at auction, to the highest bidder for cash, after said administrator shall have first given ten days notice of the time, place and terms of the sale, together with a description of the property, in the ———, a newspaper published in said county. It is further ordered, that said administrator, with all convenient speed, and within sixty days from said sale, do make report, under oath, to this Court of his account of such sale, and how he has executed this decree. It is further ordered, that said petition be recorded.

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[ No. 86. ]

REPORT of the ACCOUNT of SALES of PERSONAL PROPERTY, sold as  
PERISHABLE, or as being liable to WASTE.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Court of Probate  
of said County :

The undersigned, the administrator of the estate of Richard Rich, deceased, begs leave to report to your Honor, that on the — day of ———, 18—, he proceeded and sold the articles, hereinafter enumerated, at auction, in front of the Court house, to the highest bidder and for cash, after having

first given ten days notice of the time, place and terms of the sale, together with a description of the property in the ———, a newspaper published in this county, viz :

Article sold.	To whom.	*Ap'd value.	Am't of sale.
The horse of the deceased,	John Doe,	\$100 00	\$110 00

The undersigned further states, that said sale was, in all respects, regular, and was fairly conducted, and that the foregoing is a true and complete account thereof.

JOHN JONES.

Subscribed and sworn to, &c.

[ No. 87. ]

# ORDER to RECORD ACCOUNT of SALES.

*Richard Rich, deceased, Estate of, }*  
*Account of Sales.*

This day came John Jones and filed his account of the sale of the perishable (*or*, wasting) property of said estate, which was ordered to be sold by a decree of this Court, made and entered on the — day of —, 18—, and the said account being duly sworn to, and having been inspected by the Court : It is now ordered, that the same be recorded for future reference.

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\* The appraisement valuation ought to be stated, as a part of every account of the sale of personal property. It is only by such comparison that the Court can get at a correct idea of the character of the sale made, or whether the articles sold for a fair price.

## [ No. 88. ]

APPLICATION for AN ORDER to SELL CROP at private sale.—Code § 1750 and 1900.

*State of Alabama, }*  
*Mobile County. }*

To the Hon. Edwin Rust, Judge of the Court of Probate for said County:

The petition of Ephraim Twist, the administrator of the estate (*or*, executor of the will) of Jonathan Twist, deceased, respectfully shows unto your Honor, that the slaves of the said Jonathan, were employed in making a crop by the decedent, and were continued, by petitioner, upon the plantation which was in possession of the decedent, at the time of his death, until the last day of December, following said death, for the purpose of making and gathering said crop.

Your petitioner further states, that said crop has been made and gathered, and is now on hand ready to be sold, and prays your Honor for an order authorizing a disposition of the same by petitioner at private sale. And as in duty bound, &c. E. TWIST.

Subscribed and sworn to, &c.

If the crop should be on hand at the time of the death of the party, the order would be granted, the same as under the state of facts supposed by the frame of the foregoing petition. The form, in such cases, would, of course, vary from the above to suit the different facts, but the prayer would be the same.

## [ No. 89. ]

ORDER authorizing SALE of CROP by the Representative at PRIVATE SALE.—See Code § 1753.

*Jonathan Twist, deceased, Estate of, }*  
*Order to sell Crop. }*

This day came Ephraim Twist, administrator of said estate, and filed his application in writing, and under oath, praying an order of Court to sell the crop of said estate, now on hand; and the Court having heard and considered

said petition: It is ordered and decreed, that said administrator proceed and sell said crop at private sale, in such manner as may be best for the interests of said estate, and that he make and file an account of such sale, on oath, within sixty days after sale. It is further ordered, that said application be recorded.

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## [ No. 90. ]

REPORT of SALE of CROP by Representative.—Code § 1753.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Court of Probate  
 for said County :

Ephraim Twist, administrator of the estate of Jonathan Twist, deceased, respectfully reports unto your Honor that the following is a correct account of his sale of the crop belonging to said estate, as sold under the order of Court entered by your Honor in said estate, on the — day of —, 18—, and prays that said account may be filed and recorded.

The form of such an account would be that of an ordinary account current.

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## [ No. 91. ]

ORDER to RECORD ACCOUNT of Sales of CROP.

*Jonathan Twist, deceased, Estate of,* }  
*Account Sales of Crop.* }

This day came Ephraim Twist, and reported, under oath, his account of the sales of the crop of said estate, made under the order of Court, dated the — day of —, 18—, that the same may be recorded ; from which account it appears, that the gross sum for which said crop was sold was ——— dollars, against which appears to be charged the sum of ——— dollars, as expenses incident to the sale : It is ordered, that said account of said sale, be recorded for future reference and examination.

[ No. 92. ]

PETITION to SELL PERSONAL PROPERTY, other than NEGROES, for the  
PAYMENT of DEBTS.—Code § 1743, et seq.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate in and for said County :

Your petitioner, Ephraim Twist, the administrator in this Court, of the estate (*or*, the executor of the will) of Jonathan Twist, deceased, respectfully shows unto your Honor, that an amount of claims, largely more than sufficient to absorb all the ready money left by the deceased, the sum of which money is shown by the inventory on file, have already been presented for payment against his estate, most of which claims petitioner believes to be valid—an exhibit of the amount and character of which petitioner is ready to make and prove at such time and in such manner as your Honor shall require and direct.

In view of all which, (*if there is a will, here insert these words, viz:* and inasmuch as the will of said testator does not confer any power to sell the personal property for that purpose,) your petitioner avers that it is necessary that your Honor should grant an order to sell all of the personal property (other than negroes, *if there are negroes*) mentioned in the inventory on file, (*or*, to sell the personal property hereinafter set forth, viz:—*here specify it—or*, all the personal property set forth in the list, or schedule thereof, which is hereto attached, as part of this petition, and marked exhibit A,) for the payment of the debts of the deceased, and therefore prays your Honor to hear this, his petition in that behalf, and the proofs to be submitted in support thereof, so that such order may be granted in accordance with law in such cases, and as the necessities of said estate now require.

Your petitioner further prays, that such sale may be made for cash. And as in duty bound, &c.

EPHRAIM TWIST.

Subscribed and sworn to, &c.

## [ No. 93. ]

ORDER for the SALE of PERSONAL PROPERTY other than Slaves, to pay DEBTS.—Code § 1746.

*Jonathan Twist, deceased, Estate of,* }  
*Order to sell personal property.* }

This day came Ephraim Twist, the administrator of said estate, and filed his petition in writing and under oath, praying for an order to sell (*here carefully describe and enumerate the property to be sold*) upon the ground that such sale is necessary to pay the debts of said estate. And the Court having heard said petition and being now fully satisfied, from the testimony submitted in the premises, that such sale is necessary for the purpose aforesaid: It is ordered, adjudged and decreed, that said property be sold by said administrator, at public outcry, in front of the Court house of this county, and for cash to the highest bidder, after having first advertised the day, place and terms of sale, and the description of the property, for at least thirty days before such sale, in the ———, a newspaper published in this county, (*or, if no paper is published in the county, the notice should be ordered to be given by adding, to the above, after the words, "for at least thirty days before such sale," the words, by posting such notice thereof, for such length of time, at the Court house, and at three other public places in this county—there being no paper published therein.*) It is further ordered, that said petition be recorded.

## [ No. 94. ]

PETITION to change the ORDER as to the place of Sale.—Code § 1749; Acts 1853-'4, page 252, No. 397.

*State of Alabama,* }  
*Mobile County.* } In the Probate Court of said County.

To the Hon. Edwin Rust, Judge of said Court:

Ephraim Twist, administrator of the estate of Jonathan Twist deceased, respectfully represents unto your Honor,



that an order was granted by said Court, on the — day of —, 18—, for the sale of certain personal property of said estate, in which order it is directed that said sale shall be made in front of the Court house of this county.

Your petitioner respectfully represents, that the largest and most valuable portion of said property consists of household and kitchen furniture, which is now remaining in the house at No. —, Joachim street, in the city of Mobile, where the said deceased died; that said furniture is now well arranged and distributed, for exhibition to persons who may desire to make purchases thereof at the sale; that the same cannot be removed to the Court house for such sale without some expense, and more or less injury, and that, in the opinion of petitioner, the property will not bring as much after it has been disturbed and removed, as it will if sold on the premises, as it now stands.

Your petitioner, therefore, prays, that said order of sale may be so changed as to permit him to sell said furniture at said house. And as in duty bound, &c.

E. TWIST.

Subscribed and sworn to, &c.

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[ NO. 95. ]

ORDER changing place of SALE of PERSONAL PROPERTY, other than SLAVES.

*Jonathan Twist, deceased, Estate of, }*  
*As to place of sale of personal property. }*

This day comes Ephraim Twist, administrator of said estate, and moves the Court, by petition in writing and under oath, for leave to sell the personal property, other than slaves, mentioned in the decree of this Court, made on the — day of —, 18—, at the late residence of said deceased, at No. —, Joachim street, in the city of Mobile. And the Court having heard and considered said petition and motion,

together with the proofs submitted in support thereof, and being satisfied, from such evidence, that it will be to the interest of said estate that said petition and motion should be granted: It is ordered, adjudged and decreed by the Court, that said administrator have leave to sell said personal property, other than slaves, at the said late residence of said decedent, upon giving due notice and complying with the law in such cases made.

The form of the report of the account sales in this case should be the same as that suggested at pages 103-4, No. 86.

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[ No. 96. ]

PETITION to SELL SLAVES, for the PAYMENT of DEBTS.—Code § 1743, et seq.

To the Honorable Edwin Rust, Judge of the Probate Court for the County of Mobile:

Ephraim Twist, the administrator of the estate (*or*, executor of the will) of Jonathan Twist, deceased, respectfully represents unto your Honor, that the debts due from the estate of the deceased, which have been duly presented, a list of which, is hereto appended as a part of this petition, and marked exhibit A, amount to the sum of ten thousand dollars. That eight hundred dollars and sixteen cents was all the money left by the deceased, at the time of his death, as will appear by reference to the inventory on file; and that the nett proceeds of the sale of all the personal property, other than negroes, heretofore made under the order and decree of this honorable Court, the account of which has been duly made and filed by petitioner, amounted to the sum of twenty-two hundred and eleven dollars and twelve cents—thus making the total cash receipts of petitioner, up to this date, on account of said estate, amount to the sum of three thousand and eleven and twenty-eight one-hundredths dollars, leaving a deficit in the sum necessary to pay said debts,

not counting the interest which may be lawfully demanded, of sixty-nine hundred and eight and seventy-two one-hundredths dollars.

*(If there is a will proceed as follows, viz :* And, inasmuch as the will of the testator makes no provision for the sale of negroes for the payment of his debts) and the other personal property of said estate being now exhausted, your petitioner states that in his opinion, it will be necessary to sell all of the negroes, ten in number, belonging to said estate, as it will be found, on inspecting the value of said negroes, as fixed by the appraisers of the estate, that their aggregate valuation amounts to but a trifle more than the said deficit.

Your petitioner, therefore, prays your honor for an order to sell said negroes to pay the debts of the said estate, and that such proceedings to that end, may be had in the premises as may be necessary.

Your petitioner further states, that he is of opinion that it will be most to the interest of said estate to have said sale made for half cash, and the balance payable in twelve months, interest to be added to the credit payment—and therefore asks, that such sale be ordered accordingly. And as in duty bound, &c.,

E. TWIST.

Subscribed and sworn to, &c.

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[ No. 97. ]

ORDER Setting DAY to hear PETITION to SELL SLAVES to pay DEBTS.  
Code § 1744-245.

*Jonathan Twist, deceased, Estate of, }  
As to order to sell slaves to pay debts. }*

This day came Ephraim Twist, the administrator of said estate, and filed his petition in writing and under oath, praying for an order to sell slaves, belonging to said estate, to pay debts : It is ordered, that said petition be set down for hearing on the — day of —, 18—, and that notice

of said application, together with the said day for hearing the same, be given by publication for three successive weeks in the ———, a newspaper published in said county, calling upon all persons interested to appear and contest the same, if they think proper.

*If there is no paper published in the county, the order as to notice should read: and that notice of said application, together with the said day set for hearing the same, be given by posting the same at the Court house door three weeks before such application shall be heard, calling upon all persons interested to appear and contest the same, if they think proper.*

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[ No. 98. ]

NOTICE of APPLICATION to SELL SLAVES to pay DEBTS, to be PUBLISHED or POSTED.—Code § 1744.

*State of Alabama,* } Probate Court, 18—.  
*Mobile County.* }

*Jonathan Twist, deceased,* } This day came Ephraim  
*Estate of,* } Twist, administrator of said estate, and filed his application in due form, praying for an order for the sale of certain slaves belonging to said estate, for the purpose of paying the debts thereof: It is ordered, that said application, be set down for hearing on the — day of —, 18—, at which time all parties in interest can appear and contest the same if they think proper.

EDWIN RUST, Judge.

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[ No. 99. ]

ORDER for the SALE of SLAVES to pay DEBTS.

*Jonathan Twist, deceased, Estate of,* }  
*Order to sell slaves to pay debts.* }

This being the day set to hear the application, heretofore filed by Ephraim Twist, as administrator of said estate, praying an order to sell the (*or, certain of the*) slaves of said estate to pay debts, now comes the said petitioner, and moves the Court that his said application be granted.

And it being shown, by proof, to the satisfaction of the Court, that due notice of the filing of said application, and of the day set for the hearing thereof, hath been given as the law directs in such cases, and in all respects strictly according to the terms and requirements of the order of Court entered in the premises, on the — day of —, 18—, the Court thereupon proceeds to hear said application. And the Court being satisfied, from the evidence submitted, that the personal property of said estate, other than negroes, has all been heretofore sold, and that the proceeds thereof, together with all the money left by the decedent, will not be sufficient to pay the just debts of said estate, and that it is manifestly necessary to sell the negroes mentioned in said petition, for the purpose of paying debts: It is ordered and decreed, that said administrator do proceed and sell the slaves (*here name them*) to the best bidder, at auction, and in front of the Court house of this county, after having first given thirty days notice of the day, place and terms of sale, together with a description of the negroes, in the —, a newspaper, published in said county,—(*or, by posting said notice at the Court house, and at three other public places in the county, there being no newspaper published in said county.*) It is further ordered, that the terms of said sale be one half cash, and the remainder on twelve months credit, with interest added, and secured as the law directs. It is further ordered, that said application be recorded.

As to the form of the report of the account sales, and the order thereon, it is only necessary to refer to such report and orders upon the sale of perishable property, to be found on pages 103-'4.

## [ No. 100. ]

PETITION of Administrator for leave to SELL LANDS to PAY DEBTS.  
Code § 1754-'55.—See Act 1853-'54, pages 55-'56, Pamphlet Acts.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The petition of John Jones, administrator, (*or, administrator de bonis non, as the case may be,*) in said Court, of the estate of Richard Rich, deceased, respectfully shows, that the personal property of said estate (except slaves, *note 1,*) is insufficient to pay the debts which have been presented against said estate: That all the personal property which has come to the knowledge or possession of petitioner (except slaves) has been sold under and by virtue of the order and decree of this honorable Court, and the proceeds thereof applied, so far as realized, together with all other moneys belonging to said estate, to the payment of the debts of decedent, and such costs and expenses as have been legally incurred in and about the prosecution of said administration; and, that the only personal property and assets of said estate, (except slaves) not so administered, are mentioned in the schedule, marked A, which is hereto annexed as part of this petition, no part of which, except the claim for one hundred and fourteen dollars, against Albert Domuch, is believed, by your petitioner to be of any value.

## SCHEDULE A.

Showing the personal property and assets of the Estate of Richard Rich, deceased, remaining unadministered, in the hands of John Jones, administrator of said estate, deemed most desperate, but nominally of the following amounts, viz:

Note of Albert Domuch.....	\$114 00
Draft of John Robb on Aiken Steele.....	163 21
Due-bill of William Doolittle.....	134 52
Judgment in the Circuit Court, of this county against D. G. Badget..	201 03
Balance uncollected on sale of personal estate.....	19 65
Total.....	\$632 41

NOTE 1.—The words “except slaves,” inserted in parenthesis in the foregoing petition, are to be used only when the petition is for the sale of lands *instead of slaves*.—See Code, subdivision 2 of sections 1754 and 1755.

Your petitioner further shows, that the debts and liabilities of said deceased, still remaining, as claims which have been legally presented against said estate, and which have not been paid or satisfied by petitioner, are contained in schedule B, which is also hereto annexed as part of this petition—some of which claims are in controversy, but the greater part of which, your petitioner believes to be valid.

Your petitioner, therefore, states that the personal property of said estate, so far as discovered by, or known to him, (except slaves) is wholly insufficient to pay the debts of said deceased, which have already been presented, (*note 2, 3,*) and, that for the purpose of paying the residue of said debts, it will be necessary to sell those certain pieces and parcels of land, which are accurately described, as follows, being all (*or, part, as the case may be,*) of the real property belonging to said estate, viz: (*Here insert a description of the land, together with a statement of its location.*)

Your petitioner further shows, that the heirs of said deceased, are his five children, to wit: Charlotte, a minor, under the age of fourteen years, and who is in the custody of her mother, Mrs. Mary Rich, in this county; James, a minor, over the age of fourteen years, who resides in this county; Elizabeth, who has intermarried with Joseph Flox, and who

#### SCHEDULE B.

Showing the claims remaining unsettled, which have been presented to said administrator against said estate, viz:

Note due to and held by Artemus Gould.....	\$1,004 75
Amount claimed as due George Stores.....	99 11
Liability as endorser of note of Jonathan Bancroft.....	516 71
Judgment in favor of Alden Pashu.....	404 03
Balance of an award due Oliver Graball.....	6 10
Total.....	\$2,030 70

NOTE 2.—*If the petition be for the sale of lands instead of slaves, insert here, "that the sale of the lands, hereinafter described, will be more beneficial to the estate than the sale of said slaves, by reason of the fact—(setting out the facts relied upon to sustain the allegation.)"*

NOTE 3.—*If the petition is filed by an executor, or, an administrator with the will annexed, the petition, should, also, here state, "that said will gives no power for the sale of lands to pay debts,"—and if the purpose is to sell lands rather than slaves, then add—"and, that the sale of said lands, as prayed for, will not be in conflict with the provisions of said will."*

resides with her husband in Huntsville, Madison county, in this State ; John, who is of full age and residing in the city of Charleston, in the State of South Carolina, and Josephine, who is of full age, but believed to be of unsound mind, and who resides in this county, with the said Mary, her mother.

Your petitioner, therefore, prays, that the lands above described may be ordered to be sold for the purpose of paying the debts of said estate, and that such proceedings, orders and decrees may be had and made as may be proper or necessary to legally effect the sale of said land for the purpose aforesaid.

Your petitioner, believing that it will be for the benefit of those interested in said estate, that said land should be sold for part cash, and part on time, prays your Honor for leave to introduce proof upon that point, and that the decree of sale, if it shall be granted, shall order such sale to be made upon such terms, as to cash and time payments, as shall seem just and proper, to your Honor, from the proof submitted. And your petitioner, as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

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[ No. 101. ]

PETITION to SELL LANDS for a DIVISION of the ESTATE.—Code § 1867, et seq.; also, Pamphlet Acts 1853-'4, pages 55-'6.\*

*State of Alabama,* }  
*Mobile County.* } Probate Court, of said County.

To the Hon. Edwin Rust, Judge of said Court :

Your petitioner, John Jones, administrator of the estate of Richard Rich, deceased, respectfully represents, that more than eighteen months have elapsed since he was

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\* This petition is inserted here, and out of its proper order, in the course of an administration, for the purpose of economizing space, inasmuch as the forms for the orders thereon may be properly given along with the forms where the sale is had to pay debts.



appointed by this Court to said administration, and that, from the amount and character of the claims presented to him, he is satisfied said estate is solvent.

Your petitioner further represents, that the heirs of the said decedent are his five children, to wit: (*state them as in the petition to sell land to pay debts, &c.*)

Your petitioner further states, that the lands of said estate consist of five parcels or lots, described and located as follows, viz: (*insert an accurate description*) which said lots or parcels of land, are of unequal values, and are so situated, and are of such dimensions, respectively, that they cannot be equitably divided among said heirs. Your petitioner therefore states, that he believes that the interests of all persons concerned in said lands, will be best promoted by a sale thereof, and a distribution of the proceeds among said heirs, according to their several rights.

Wherefore, your petitioner prays your Honor, to authorize him to sell said land, for cash,\* for the purpose of making a division of said estate, among said heirs, according to the statute in such case made; and that such proceedings, orders and decrees may be had and made, in the premises, as may be sufficient to effect such sale, for said purpose, according to law. And as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

*If the petitioner is an executor, or an administrator with the will annexed, of a will which, in general terms, devises the lands to be divided between his devisees, the petition should show, "that the said testator, devised said lands jointly to his said devisees, but did not ascertain, in his said will, the respective shares of his said devisees, in any such manner as that the same can now be designated, or be set apart and allotted to them; and that while it is not in conflict with the provisions of said will, to sell said lands, or any of them, for the purpose of distribution, yet said will gives no power, for any sale thereof for such purpose."*

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\* If it is deemed advisable to sell the land on other terms than for cash, state the terms desired in the closing prayer, as directed in the petition for a sale of lands to pay debts, &c.

[ No. 102. ]

ORDER SETTING DAY to hear and determine as to PETITION to SELL LAND to PAY DEBTS, or for DIVISION, Ordering Publications, Notices, &c.

*Richard Rich, deceased, Estate of, }  
Order setting day, &c. }*

18

John Jones, administrator of said estate, having this day filed his application, in writing and under oath, praying for an order and proceedings to sell certain real estate, in said petition described, of the property of said decedent at the time of his death, for the purpose of paying the debts due from said estate, upon the ground that the personal property of said estate is insufficient for that purpose, (*or*, for division, and upon the ground that the same cannot be equitably divided among the heirs—*or*, devisees—of said estate.) and it appearing from an inspection of said petition, that the only heirs of said deceased, are his five children, viz: Charlotte. who is under the age of fourteen years, and who is in the custody of her mother, Mary Rich, in this county; James, a minor, over the age of fourteen years, who resides in this county; Elizabeth, who has intermarried with Joseph Flox, who resides with her husband at Huntsville, Madison county, in this State; John, who is of full age, and who resides in the city of Charleston, in the State of South Carolina, and Josephine, who is of full age, but believed to be of unsound mind, and who resides with her mother in this county: It is, therefore, ordered, that the — day of —, 18—, be, and it is hereby appointed a day for hearing the said application, and the proofs which may be submitted in support of the same. It is further ordered, that due notice of the nature of said application, and of the time above set for the hearing thereof, be given, at least forty days before the said day of hearing, by publication in the —, a newspaper published in said county, for all persons in interest to appear and contest said application, if they think

proper. It is further ordered, that said Elizabeth and Joseph Flox, and James Rich have notice of this proceeding, and of the day set for hearing the same, by citation, to be personally served on them: that said Charlotte and Josephine have the same notice by service of citation upon the said Mary Rich, she having the custody of said Charlotte, and the said Josephine, residing with her. And, inasmuch as the Court does not judicially know that the said Josephine is of unsound mind: It is further ordered, that she have the same notice, by personal service of citation upon her. It is further ordered, that a copy of said published notice be forwarded through the post office, postage paid, and addressed to said John Rich, at said city of Charleston, within five days after the first publication thereof, as aforesaid.

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[ No. 103. ]

NOTICE of APPLICATION to SELL LAND by ADMINISTRATOR.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*Richard Rich, deceased,* } This day came John Jones,  
*Estate of.* } administrator *de bonis non*, with  
the will annexed, of said estate, and filed his application in due form and under oath, praying for an order of sale of certain lands described therein, and belonging to said estate, for the purpose of paying debts; upon the ground that the personal property is insufficient therefor: (*or, for the purpose of division, and upon the ground that said land cannot be equitably divided:*) It is ordered, that the — day of —, 18—, be appointed a day for hearing such application, at which time all parties in interest can appear and contest the same if they think proper.

EDWIN RUST, Judge.

## [ No. 104. ]

## ORDER APPOINTING GUARDIAN AD LITEM.

*Richard Rich, deceased, Estate of, }  
 Appointment of Guardian ad litem. }*

18

It now appearing to the Court that publication has been made and sent, and that citations have been served for Charlotte Rich, a minor, under the age of fourteen years, and for Josephine Rich, who is of full age, but supposed to be of an unsound mind, upon Mary Rich, with whom the said Josephine resides, and who is the custodian of the person of the said Charlotte; and that citations have also been personally served upon the said Josephine and James Rich, the latter a minor, who is over the age of fourteen years, and that publication has been made and sent, all served, published and sent, in strict accordance with the order of this Court made and entered in the premises on the — day of —, 18—, and neither the said Charlotte, James nor Josephine having nominated a fit and suitable person to act for them, nor for either of them, in the proceeding, for the sale of certain lands, now pending; and no other person having appeared for them, nor for either of them; and, it appearing that a reasonable time has elapsed, for such purpose: It is, therefore ordered, that L. Abel, who is deemed, by the Court, a fit and proper person, and who is not of kin to the applicant, nor in any way interested in the result of the application, be, and he is hereby appointed guardian *ad litem* to represent and protect the interests of said minors, and the interests of the said Josephine, in the matter of said proceeding, and that he have notice of his said appointment.

[ No. 105. ]

FINAL DECREE Ordering Sale of Lands to pay Debts, the personally  
having been exhausted, or, for DIVISION.

<i>Richard Rich, deceased, Estate of, }</i>	18
<i>Order to sell lands. }</i>	

This being the day appointed, more than forty days since, for hearing the application of John Jones, administrator in this Court, of said estate, for an order to sell certain lands, hereinafter described, for the purpose of paying the debts due from said estate, (*or, of division, and upon the ground that the same cannot be equitably divided among the heirs—or, devisees—of said estate—and if any heir or devisee resides out of the State, proceed thus:* and A. B and C. D., who are non-residents of this State, having been duly brought into Court, by publication in a newspaper, &c., in all respects strictly according to the order of this Court made and entered in the premises, on the — day of —, 18— :) Now comes the said administrator, and moves the Court, that said application be granted; and also comes L. Abel, who is not of kin to said administrator, (*or, executor,*) nor in any way interested in this proceeding, and who was heretofore duly appointed, and has consented to act as guardian *ad litem*, to represent and protect the interests of Charlotte and James Rich, minors, and of Josephine Rich, who is supposed to be of unsound mind, and who are interested in this proceeding; and the said guardian *ad litem* having filed his answer, in writing, as such guardian on the — day of —, 18—, denying the allegations contained in said application, and the said Elizabeth and Joseph Flox, and John Rich having had notice, strictly and in all respects, in accordance with the order of this Court, made and entered in this proceeding on the — day of —, 18—, as is now shown, to the satisfaction of the Court, by due proof; and it having been proven to the satisfaction of the Court, by the oaths of A. B. and C. D., who are disinterested witnesses, and whose testimony

has been taken by deposition, and upon direct and cross-interrogatories, as in Chancery cases, and which testimony has been filed of record in this proceeding,\* that the personal property is insufficient to pay the debts of said estate, and that it is necessary, and will be to the interest of said estate, that the lands, described as follows, to wit: (*Insert an accurate and full description, omitting such lands as may have been set off for the widow and children*)—should be sold for the purpose of paying the debts of said estate, according to the prayer of said application—(being all the land belonging to said estate except such as has been duly set off for the widow and children, *if such is the fact.*) It is, therefore, ordered, adjudged and decreed, that said application be granted; and said administrator is hereby ordered to sell the above described land, at public outcry, in manner and form as the law directs in such cases, after having first given notice, for at least three successive weeks, of the time, place and terms of the sale, together with a description of the property, in the ———, a newspaper published in this county—(or, in the said county where said lands are located—*if the land is located out of the county*)—said sale to be made upon the following terms, viz: one-third to be paid in cash; one-third on a credit of twelve months, and one-third on a credit of twenty-four months; the credit payments to bear interest from the date of sale, and to be secured as the law directs—(or, said sale to be made for cash—*omitting all of the above statement of other terms.*)

(*If the widow's dower is to be sold—see Code § 1873—add to the above as follows, viz: And A. B., the widow of said decedent, having filed her written consent, as such widow, in this Court, that her dower-interest in such lands may be*

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\* *If the proceeding is for a sale for distribution, omit all recitals after the reference mark, which is used at the head of this note, and in place of such omitted matter proceed as follows, viz: that the lands described as follows, to wit: (Here insert description of the land to be sold)—cannot be equitably divided among said heirs—or, devisees—and that the same is required to be sold for the purpose of making an equitable division of said estate.*

sold so as to vest in the purchaser the complete title : It is further ordered, adjudged and decreed by the Court, that the said dower-interest, of said widow, be sold with the residue of the land.

In all cases where the petitioner is an executor, or administrator with the will annexed, the directions contained in note 3, to the "petition by an administrator for leave to sell lands to pay debts," should be consulted, in drafting the decree.—Code § 1754.

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[ No. 106. ]

Proof of Advertisement.

AFFIDAVIT OF PUBLISHER.

*State of Alabama,* }  
*Mobile County.* }

Before me, Edwin Rust, Judge of the Court of Probate for said county, personally appeared A. B., publisher, (*or, one of the publishers,*) of the ———, a newspaper published in said county, who being by me first duly sworn, states that the following notice has been regularly published once a week for three consecutive weeks, in the said paper.

Subscribed and sworn to before me, }  
 this — day of —, A. D. 18—. }  
 EDWIN RUST, Judge. }

A. B.

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NOTICE OF ADMINISTRATOR'S SALE.

Under and by virtue of an order and decree of the Honorable Edwin Rust, Judge of Probate for Mobile county, I will sell at public auction, in front of the Court house, of Mobile county, Alabama, on Monday, the — day of —, 18—, at twelve o'clock, M., all the following described real estate, belonging to the estate of Richard Rich, deceased, to wit : (*Here insert description of the land.*)

Terms of sale—One-third cash, and the balance on a credit of one and two years, in equal instalments, with interest added; the credit payments to be secured by the notes of the purchasers, with at least two sufficient securities.

JOHN JONES, Administrator.

## AFFIDAVIT OF REPRESENTATIVE.

*State of Alabama,* }  
*Mobile County.* }

Before me, Edwin Rust, Judge of the Court of Probate for said county, personally appeared John Jones, administrator of the estate of Richard Rich, deceased, who being by me first duly sworn, states that the foregoing advertisement was posted up at the door of the Court house, and at three other public places in said county, for three successive weeks before said day of sale.

Subscribed and sworn to before me, }  
 this — day of —, A. D. 18—. } JOHN JONES.  
 EDWIN RUST, Judge. }

If there is a paper published in the county the form of stating the mode of advertisement should be as in the first of the foregoing affidavits, otherwise as in the last affidavit. The foregoing forms with slight alterations, will answer for proof of publication in almost all cases—probably in all.

There is no statute, nor any rule of Court requiring such a form for proof of publication. Proof, however, must be brought home to the mind of the Court in some shape; and this mode has been adopted because it appeared to be simple and ample, and because it had the sanction of Chancery practice.

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[ No. 107. ]

## REPORT of SALE of LAND for CONFIRMATION.—Code § 1765.

To the Hon. Edwin Rust, Judge of the Probate Court of the  
 County of Mobile and State of Alabama :

John Jones, the administrator of the estate of Richard Rich, deceased, respectfully represents to your Honor, that on the first Monday of November, 18—, between the hours of twelve o'clock noon, and five o'clock in the afternoon, in pursuance of law in such cases made, and in strict compliance with all the terms, conditions and requirements of the former order and decree of this Court, which was the decree of sale granted and entered in the premises on the — day of —, 18—, he proceeded and sold, at public outcry, in front of the Court house of this county—(or, naming the county in



*which the lands lie*)—the land set forth and particularly described in said former order and decree; and that said land was bid off and purchased, at said sale, by John Johnston, for the sum of ——— dollars. This administrator further reports, that said amount so bid, by said Johnston, for said land, was the highest and best bid for the same; and that said sale was, in all respects, fairly conducted, and that the land sold for a sum not greatly less, or disproportionate to the real value of said land—(or, *if the object be to vacate the sale*, that said sale was for a sum less than, and greatly disproportioned to the real value of the land—or, said sale was not fair, or fairly conducted, inasmuch as A. B. the said purchaser, made unfair and improper representations to the people who were assembled to bid at said sale, which representations were calculated to, and did, as the undersigned fully believes, influence said assembly unfairly, and to the prejudice of said sale.) Further, that said Johnston has complied with the terms of said sale and purchase, by the payment of one-third of said purchase money in cash, and by giving the joint notes of himself, as principal, and A. B. and C. D., as his securities, each note dated on the day of said sale, and bearing interest from the date thereof, one of which said notes is for one-third of the amount of said purchase money, and due at twelve months from its date, and the other, for the same amount, and due at twenty-four months from its date—which security is believed by the undersigned to be good and sufficient—(but, *if the design is to set the sale aside for want of good security, use the following, viz: but said security is not believed, by the undersigned, to be sufficient.*)\*

In consideration of the facts above stated, and which the undersigned is ready to prove, at such time, and in such form

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\* *If the sale was for cash, and the report is that the money has been paid, the administrator should ask "for an order to make a deed to such purchaser, conveying all right, title and interest which the deceased had in said lands, at the time of his death," according to § 1770 of the Code—or, if the object is to set aside the sale, the prayer should be, "that the sale be vacated and set aside." See Code § 1767, et seq.*

and manner, as may be required by your Honor, the undersigned respectfully prays, that said sale may be in all things confirmed and made good to the said purchaser. And as in duty bound, &c.

JOHN JONES, Administrator.

Subscribed and sworn to, &c.

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[ No. 108. ]

ORDER SETTING A DAY, &c., for TAKING PROOF where the REPORT is adverse to a CONFIRMATION of the SALE, or where the Court is not satisfied that it ought to CONFIRM.

*Richard Rich, deceased, Estate of, }*  
*Order setting day, &c. }*

This day came John Jones, the administrator of said estate, and filed his report in writing, verified by oath, of the sale at auction, of certain real estate, made under an order and decree entered in the premises by this Court on the — day of —, 18—, setting forth, in said report, among other things, that at said sale A. B. bid off the land described in said former decree, for the sum of ——— dollars, (*or*, that said sale was not fairly made and concluded, inasmuch as A. B. the purchaser, made unfair and improper representations, which, it is believed, were calculated to injure said sale) —and the Court not being now satisfied that said amount, for which said land sold, was not less than and greatly disproportionate to the real value thereof: (*or*, and the Court not being now satisfied that said sale was fairly made and conducted :) It is ordered, that the matter of the confirmation of said sale be continued to, and set down for hearing on the — day of —, 18—, in order that witnesses may be examined, and proof had in relation to said sale. It is further ordered, that (*if the widow's dower was ordered to be sold*) Mary Rich, the widow of said decedent, and Josephine Rich, a daughter, and one of the heirs of said deceased, these being

the only heirs (*or*, devisees) and persons of full age, residing, or who are represented by attorney or otherwise, in this county, so far as the Court knows, or is advised, who will be entitled to share in the proceeds of the final sale of said land; and L. Abel, Esquire, who has heretofore been appointed, and who has thus far, in this proceeding, acted as guardian *ad litem* for Charlotte and James Rich, minors, and children of said deceased, and for Josephine Rich, who is of full age, who has been heretofore served with process, but has not appeared, and who is supposed to be of an unsound mind, and A. B. said purchaser, have notice of this order, and of the said day so set for such hearing, by citation, to be served on them at least five days before the said matter shall be heard, so that they may make proof and show cause upon the question of confirmation of said sale, if they think proper.

The mode of proceeding, contemplated by the foregoing order, is not enjoined by statute, but it would seem to be eminently proper in the exercise of this most delicate function of the Probate Court—the sale of the property of heirs and infants—a branch of the Probate jurisdiction of this State, which, elsewhere, is ordinarily exercised exclusively by a Court of Equity. But, while it is thought, in cases of doubt as to the propriety of confirming a sale, that the infants should be heard upon the question by their guardian *ad litem* or next friend, appointed by the Court, as, also, that the adults, residing in the county, should have notice, it would be both too expensive, and require too much time, at this stage of such proceeding, for the Court to order a new publication for non-residents, or new process for those who reside in distant parts of the State. If these parties, after having been notified in the first instance as required by the initiatory order, do not appoint attorneys to represent them, it is fair to presume that they do not care to be heard. If they do appoint attorneys, such attorneys should have notice—that far, adopting the practice of other Courts.—See Code § 2273.

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[ No. 109. ]

ORDER as to CONFIRMATION of SALE of LAND on hearing PROOF.—  
Code § 1765, et seq.

*Richard Rich, deceased, Estate of, }*  
*As to confirmation of sale. }*

This day comes John Jones, administrator of said estate, and also comes Charlotte and James Rich, who are minors, and Josephine Rich, who is of full age, but believed to be of

unsound mind, by (*should the person who had been previously appointed and now notified, fail to appear, the Court should, by no means, proceed to judgment until another suitable person is appointed, and has consented to act, and these facts should be recited in the decree,*) L. Abel, Esquire, their guardian *ad litem*, and next friend, heretofore duly appointed by this Court to act for them in this proceeding, the said Josephine having, at all times, now and heretofore, failed to appear personally, or by attorney, though notified to do so, (*if any other parties had employed attorneys, this order should show the appearance of such attorney, or notice to them,*) and also comes A. B., (*or, if the parties fail to appear let the recital read—and it appearing to the satisfaction of the Court, from an inspection of the papers on file in this proceeding, that A. B. and M. R.—or, any other of the parties, required to be notified by the last preceding order, who may be absent—have been duly notified of the matter now in question, by citation issued and personally served in strict accordance with the order of this Court (the last preceding order is meant) made and entered on the — day of —, 18—, and the said A. B. (or, any other of the parties) now moves the Court, that the sale of land heretofore made in this estate by said administrator, under the order of this Court, the report of which was duly filed in this Court, by said administrator, on the — day of —, 18—, be confirmed—(and if the money has all been paid—that said administrator be directed to make a conveyance of said land to said A. B.)* And the Court having heard, and duly considered the proofs submitted, touching the manner in which said sale was conducted, (*or, touching the price for which said land was sold, as the case may be,*) and now, being fully satisfied, from said proofs, that said sale was, in all things, made according to law, and the former order and decree of this Court in that behalf, and that the said sale was fairly conducted and concluded, (*or, and now, being fully satisfied, from said proofs, that said land, at*

said sale, sold for an amount not greatly less and disproportioned to its real value.) It is ordered, adjudged and decreed—(*decree as in the ordinary case of confirmation ; but if the sale is to be set aside, then proceed as follows, viz :* and the Court being satisfied, from the proof, that said land sold for an amount less than, and greatly disproportionate to its real value—or, that said sale was not fair, &c., *following the language used in the form which is given for a report :*) It is ordered, adjudged and decreed, by the Court, that the said sale, of said land, to the said A. B., be, and the same is hereby vacated, annulled and set aside. It is further ordered and decreed, by the Court, that said administrator be, and he is hereby directed to make another sale of said land ; such resale to be made, conducted and concluded in all respects in accordance with the previous decree, directing the sale of said land in the first instance. And it appearing to the Court, from the said report of said administrator, that said A. B. has paid to him the sum of one thousand dollars, being the amount of his bid for said land, at said sale—(*or, if only a part was paid, being the proportion of the purchase money, so bid, which was required to be paid in cash, by the terms of the sale, and that for the balance of said purchase money, said administrator now holds the two notes of said A. B. for one thousand dollars each, upon which C. D. and E. F. are securities :*) It is ordered and decreed, by the Court, that said administrator pay back, or refund to said A. B. the said sum of one thousand dollars—(*if notes were also given, add—and that said notes also be returned to the said A. B., to be cancelled. If the decree should be to confirm, follow the form of the conclusion of the next decree.*)

## [ No. 110. ]

ORDER of CONFIRMATION when the Court does not see reason to ask for PROOF, and when the REPORT is in favor of CONFIRMATION.

*Richard Rich, deceased, Estate of, }*  
*Confirmation of sale. }*

This day comes John Jones, the administrator of said estate, and files his report in writing, and under oath, setting forth, among other things, that on the — Monday of —, 18—, being the tenth day of that month, between the hours of twelve o'clock noon, and five o'clock in the afternoon, in pursuance of law in such cases made, and in strict accordance with, all and singular, the terms and requirements of the former order and decree of this Court granted and entered in the premises on the — day of —, 18—, he proceeded and sold, at public outcry, in front of the Court house in this county, the lands set forth and particularly described in said former order and decree, and that said land was purchased, at said sale, by A. B. for the sum of three thousand dollars. And it appearing to the satisfaction of the Court from said report, and from the evidence now therewith submitted, that said amount, so bid for said land, by said A. B. was the highest and best bid for the same: that said sum, so bid, was not greatly less or disproportionate to its real value: that said sale was legally and fairly made, conducted and concluded; and that the proportion of the purchase money, so bid, which was required to be paid in cash by said former order and decree has been duly paid, and that the balance of said purchase money has been secured sufficiently, and according to law and said decree of sale: It is ordered, adjudged and decreed, that said sale be, and the same hereby is approved, and in all things ratified and confirmed by the order and authority of this Court. It is further ordered, that said report and all other papers on file relating to this proceeding be recorded. It is further ordered, that said administrator pay the costs of this proceeding, to be allowed to him against said estate.

## [ NO. 111. ]

WIDOW'S CONSENT that her DOWER-INTEREST be SOLD with the residue of the LAND.—See Code § 1873.

To the Honorable Edwin Rust, Judge of the Probate Court of Mobile county :

Mary Rich, widow of the late Richard Rich, deceased, and whose estate is now being administered in this honorable Court, by John Jones, who is the administrator thereof, (*or*, who is the executor of the last will and testament of said deceased) represents to your Honor, that a sale of the lands (*or*, a portion of the lands) belonging to the said estate of her said late husband have been ordered, by the judgment and decree of said Court, rendered in the premises on the — day of —, 18—, for the purpose of paying debts, (*or*, for the purpose of a division among the heirs—*or*, devisees, *as the case may be*,) of said estate.\* Your petitioner, therefore, consents that her dower-interest in the lands described in said decree of sale (*or*, in said petition for a sale) be sold with the residue of said land, so as to vest in the purchaser or purchasers thereof a complete title to the same.

Your petitioner prays your Honor, that such orders and decrees may be entered in the premises, as may be necessary and proper to effect the sale, of said dower-interest, in full accordance with said decree of (*or*, petition for) sale and with the foregoing consent ; and that your Honor will, in no event, permit wrong to come upon your petitioner by reason of this consent. And as in duty bound, &c.

MARY RICH.

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\* *Or*, if the order to sell has not yet been made, say, " that the petition of said administrator to sell the (*or*, a portion of the) lands of said deceased, for the purpose of paying debts, (*or*, for division, &c.) is now on file and is set for a hearing on the — day of —, 18—."

## [ No. 112. ]

**ORDER for the SALE of WIDOW'S DOWER-INTEREST.\***

*Richard Rich, deceased, Estate of, }  
For the sale of dower-interest. }*

This Court, having, by its decree, rendered and recorded on the — day of —, 18—, upon the petition of John Jones, administrator of said estate, (*or*, executor of the last will and testament of said decedent,) ordered the sale of the realty, (*or*, a portion of the realty) belonging to said estate, and which land is particularly described in said decree, for the purpose of paying the debts (*or*, for the purpose of division among the heirs—*or*, devisees) of said estate, this day comes Mary Rich, the widow of said deceased, and files her written consent and prayer, that her dower-interest in the said lands, may be sold, so as to vest in the purchaser, or purchasers, at such sale, the complete title to said land: It is, therefore, ordered, adjudged and decreed by the Court, that the said dower-interest of said Mary be sold with the residue of said land, according to the said consent and prayer of the said widow, and agreeably to the provisions of law in such cases made.

## [ No. 113. ]

**APPLICATION of WIDOW for an Order that her DOWER-INTEREST in the PROCEEDS of the SALE of LAND be paid her.—Code § 1874.**

**To the Honorable Edwin Rust, Judge of the Court of Probate for the County of Mobile:**

The petition of Mary Rich, widow of the late Richard Rich, now deceased, and whose estate is now being administered in this Court by one John Jones as administrator thereof, respectfully shows that, as the widow of said decedent, she filed her written consent in this Court, that her dower-interest in certain lands, then about to be sold, and

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\* If the widow's consent is filed during the pendency of the petition, then it would be disposed of as in the conclusion of form No. 105.



which had belonged to said Richard Rich, deceased, at the time of his death, should be sold, with the residue of said land: that an order for such sale of said dower-interest was accordingly made, by said Court, in the said estate, on the — day of —, 18—, to which written consent, and the said order of the Court thereon, your petitioner begs leave to refer, for greater certainty.

Your petitioner further states, that the said land has been sold, and that the sale thereof was duly confirmed by an order of this Court, made and entered on the — day of —, 18—. For the particulars of said sale, and the price at which said land sold, your petitioner begs leave to refer to the report of said sale, as made by the administrator, and which is on file in this Court, and is referred to in the said decree of confirmation of said sale.

Your petitioner, therefore, prays, that your Honor will make due inquiry into the facts aforesaid, and that said administrator may be cited to show cause, if any he has, why your Honor shall not make an order, allowing to your petitioner a fair equivalent for her said dower-interest in said lands, and decree that the same be paid to her, by said administrator, when the money, for which said lands sold, shall have been collected. And as in duty bound, &c.

MARY RICH.

Subscribed and sworn to, &c.

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[ No. 114. ]

ORDER to CITE Administrator for the purpose of making inquiry as to the amount of DOWER-INTEREST of WIDOW in LANDS sold by the Representative.

*Richard Rich, deceased, Estate of, }  
In a matter of Dower-Interest. }*

18

This day came Mary Rich, and filed her application in writing, and under oath, alleging, among other things, that she is the widow of said decedent; that her dower-interest;

as such widow, in certain lands, heretofore ordered to be sold by this Court, was, with her written consent, and by the order of this Court, duly sold with the residue of said lands, by said administrator, and which sale has been heretofore confirmed by this Court; and asking that such steps shall be taken as may be requisite to ascertain her dower-interest in the proceeds of said sale, and that a fair equivalent for such dower-interest may be ordered by the Court, to be paid her, by John Jones, the administrator of said estate, when the said purchase money shall be collected: It is, therefore, ordered by the Court, that the — day of —, 18—, be set for hearing said petition; and that said administrator be duly cited to be, and appear in this Court, on that day, to contest with the said applicant as to her said dower-interest, and to show cause, if any he has, why a decree should not be made, in favor of the said applicant, ordering said administrator to pay such sum, as may be adjudged to her for such dower-interest so soon as the purchase money, for which said land sold, may be collected.

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[ No. 115. ]

ORDER ascertaining DOWER-INTEREST in the PROCEEDS of LAND sold by the Representative.

*Richard Rich, deceased, Estate of,*  
*In a matter of dower-interest to be paid by representative.* }

This being the day regularly set for hearing the application of Mary Rich, the widow of said decedent, for an allowance of a fair equivalent for her dower-interest in the land of said decedent, which has been heretofore sold by said administrator, under the order of this Court; now comes the said Mary Rich, and also comes John Jones, the administrator of said estate, and on motion, (*or, failing to appear, use the words*, and it appearing to the Court that said John Jones, as administrator of said estate, has had due notice

of this proceeding, by citation personally served on him, and of the time set for hearing the same, on motion of the said applicant) the Court proceeds to hear the matter of her said application: And it appearing to the satisfaction of the Court, from due proof and good evidence, that said administrator, in his said official capacity, and under the order of this Court, has sold the lands, referred to in said application for the sum of ten thousand dollars, including, in said sale, the dower-interest of said widow, according to the order of this Court, made in pursuance of the written consent of said widow, which had been for that purpose, and before that day, duly filed in the office of the Judge of this Court, and that said sale has been confirmed, by the decree of this Court entered on — day of —, 18—. And it being shown by evidence, to the satisfaction of the Court, that the said Mary is about twenty-nine years of age, and in good health. It is ordered, adjudged and decreed by the Court, that the said Mary Rich be allowed the one-sixth part of said purchase money (*or, the one-sixth part of the nett proceeds of said sale after paying all the expenses thereof—or, whatever other sum may be allowed,*) that is to say, that she be allowed the sum of sixteen hundred and sixty-six and sixty-six-hundredths dollars, to be paid her by said administrator, when said purchase money is collected,—such sum being considered and adjudged by the Court, to be only a fair equivalent for the dower-interests of said widow, in said land.

[ No. 116. ]

REPORT of ADMINISTRATOR, showing the full payment of the PURCHASE MONEY for LAND and asking for leave to CONVEY.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

To the Hon. Edwin Rust, Judge of said Court :

John Jones, the administrator of the estate of Richard Rich, deceased, respectfully represents unto your Honor, that John Johnston has this day completed his payments for the lot or tract of land, bought by him, on the — day of —, 18—, at a sale of the lands, (*or*, of certain of the lands) then belonging to said estate, made by said administrator under the orders of this Court ; and which said sales was duly confirmed to the said Johnston, by the decree of this Honorable Court rendered on the — day of —, 18—.

And now, the said Johnston having so paid up, in full for said land, and complied with all the conditions of said decree of sale, and agreeably to the terms of the confirmation of said sale, this report is made, so that your Honor may order a conveyance of said land, to be made to said Johnston, or make such other order and decree in the premises as may be according to law.

JOHN JONES, Administrator.

Subscribed and sworn to, &c.

[ No. 117. ]

ORDER that Administrator make CONVEYANCE of LAND to the PURCHASER.

*Richard Rich, deceased, Estate of,* }  
*Order to convey.* }

This day came John Jones, the administrator of said estate, and filed his report in writing, showing, among other things, that John Johnston, who became the purchaser of the (*or, if he did not purchase all, then, of certain of the*) land

of said estate, which land is particularly described in the decree of this Court recorded on the — day of —, 18—, has fully complied with the conditions contained in the decree of this Court under which the said sale was made, and with the requirements of law in such cases, and that said Johnston has paid to said administrator the entire amount of the purchase money, for which the said land was sold; and the Court being now satisfied, from an inspection of the records, that the sale of said land was, in all things, regular and fair, and that said sale was heretofore duly approved and confirmed by the decree of this Court: It is ordered, adjudged and decreed, that the said John Jones, as such administrator, as aforesaid, be authorized and he is hereby ordered to convey by proper deed, to the said John Johnston, all right, title and interest which the said Richard Rich, deceased, had in such lands at the time of his death.

*(If it should be made to appear to the Court, that the administrator is absent, or prevented, from any cause, from being able to make the conveyance personally, the Court has the power, in that case, to order that a third party may make the deed, in which case use the following form of additional statement, and for the conclusion of the decree—Code § 1770:)*

And it being further shown, by evidence which is satisfactory to the Court, that the said John Jones is not now in the State of Alabama, but is in the State of New York, and that Thomas Tompkins is his only authorized agent in Mobile, *(or any other person the Court may see fit to appoint,)* and that he is a proper person, in the opinion of the Court, to make a conveyance of said land to said purchaser, and he now appearing in open Court and consenting to act: It is ordered, adjudged and decreed by the Court, that said Tompkins be, and he is hereby authorized and ordered to convey by deed, —*(concluding as above, where the representative is ordered to convey.)*

[ No. 118. ]

PETITION of PURCHASER for DEED, in case the Administrator fails or refuses to REPORT the PURCHASE MONEY PAID.

To the Honorable Edwin Rust, Judge of Probate of Mobile County :

The petition of John Johnston, respectfully represents unto your Honor, that said Court did, by its decree rendered in the matters of the estate of the late Richard Rich, deceased, on the — day of —, 18—, order and authorize the sale, by John Jones, the administrator of said estate, of certain lands which had belonged to said decedent at the time of his death: that said administrator, under and in pursuance of said decree, as petitioner is informed and believes, proceeded and made sale of said lands, (*or, a portion of said lands, in case all were not then sold,*) at which sale your petitioner became the purchaser thereof, (*or, of a portion thereof, as the case may be,*) as will appear by the report of said sale, filed in this Court, by said administrator, and by the order of Court, confirming said sale to your petitioner, which order of confirmation was entered of record on the — day of —, 18—.

Your petitioner further states, that he has now fully complied with all the terms and conditions of said sale, which were, or are at all obligatory upon him, and that he has paid the whole of the purchase money, due by him for his said purchase: that he has applied to said administrator, and requested him to make such report of the facts to your Honor, as would enable this Court to order a conveyance of the premises to your petitioner; and that said administrator has utterly failed and neglected to comply with said request.

In consideration of all which, your petitioner prays your Honor, to cite said Jones to appear in this honorable Court, on a day certain, to show cause, if any there be, why he should not be ordered to make such conveyance to your petitioner, in accordance with the law in such cases made. And as in duty bound, &c.

JOHN JOHNSTON.

Subscribed and sworn to, &c.

## [ No. 119. ]

**PETITION of PURCHASER, where the Representative of the Estate fails or REFUSES to CONVEY in accordance with an Order of Court.**

**To the Honorable Edwin Rust, Judge of the Court of Probate in and for Mobile County:**

The petition of John Johnston, respectfully shows, that on the — day of —, 18—, this honorable Court by its decree, ordered John Jones, as the administrator of the estate of Richard Rich, deceased, to make a conveyance, to your petitioner, of certain lands, to which said decree refers, (*or, which said decree describes, as the case may be.*)

Your petitioner further shows, that, since said decree for a conveyance was made, he has repeatedly applied to said administrator for a deed to said land according to law, and as authorized by the terms of said decree; but has been utterly unable to obtain a compliance, on the part of said administrator, with such, your petitioner's, lawful and proper demand.

For relief in the premises, your petitioner prays your Honor, to cause citation to issue to said administrator, to show cause, at such certain time as your Honor shall appoint, why he should not be attached, as for a contempt of Court in so failing to comply with the said order of this Court. And as in duty bound, &c.

JOHN JOHNSTON.

Subscribed and sworn to, &c.

[ No. 120. ]

ORDER that Administrator be CITED to SHOW CAUSE why he should not CONVEY LAND to PURCHASER, or, why he should not be ATTACHED as for a CONTEMPT, in failing to CONVEY LAND, as ordered by the Court.\*

*Richard Rich, deceased, Estate of, } 18*  
*Order to Administrator to show cause. }*

This day came John Johnston, and filed his petition in writing, duly verified by his oath, setting forth, among other things, that he purchased from John Jones, as the administrator of said estate, and under the decree of this Court, certain lands which had belonged to said deceased at his death, for which purchase he has paid the whole purchase money, in accordance with the decree of the Court and the terms of such sale—the said sale having been heretofore regularly confirmed by the order of this Court—and further stating, that said administrator has utterly failed and neglected to take the proper steps to have a deed of said land made to petitioner, notwithstanding petitioner has repeatedly requested him so to do. (*If the Court has already ordered a conveyance—as in form, No. 119—then, instead of the foregoing, recite as follows, after the words “among other things,” viz: that John Jones, the administrator of said estate, has failed and refused to make a conveyance to him, of certain lands, as he was ordered to do by the terms of the decree of this Court, rendered in the premises on the — day of —, 18—,*) and praying that said administrator should be cited, to show cause why he should not make such conveyance as the law directs in such cases: (*or, if he had been before ordered to convey, say, to show cause why he should not be attached, for a contempt of this Court, in failing so to make the proper conveyance of said land, in accordance with the decree of this*

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\* This order is so framed as to apply to the two last preceding petitions, where the administrator fails to convey as ordered by the Court, and where he fails and refuses to report the purchase money paid, so that the Court may make the order for conveyance.



Court.) It is ordered, that said John Jones, as such administrator be cited, by process to be personally served upon him, to be and appear before this Court, on the — day of —, 18—, to show cause, if any he has, why he should not be ordered to make conveyance of said lands to said John Johnston, in accordance with the said prayer of his said petition (*or*, why he should not be attached for a contempt of Court, in failing to make such conveyance, as aforesaid, in compliance with the former order of this Court.

If an attachment should be resorted to, the form of an order for such process, to be found in connection with the subject of Wills, may be used, varying the recitals, upon which the order is made, to suit the facts.—See No. 4.

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[ No. 121. ]

FORM of DEED for LAND SOLD under ORDER of Court by an ADMINISTRATOR or EXECUTOR.—Code § 1770.

*State of Alabama,* }  
*Mobile County.* }

Whereas John Jones, the administrator of the estate (*or*, the executor of the last will and testament) of Richard Rich, deceased, duly appointed by, and qualified in the Probate Court of said county, heretofore applied for, and, on the — day of —, 18—, obtained an order and decree of said Court for the sale of the land described as follows, viz: (*Here describe land as set out in the decree,*) which land was sold by said administrator (*or*, executor, *as the case may be,*) under and in pursuance of said decree, on the — day of —, 18—, at public outcry, between the hours of twelve o'clock, M., and five o'clock, P. M., to — —, for the sum of ——— dollars,—that being the highest and best bid for the same,—after the time, place and terms of the sale, together with a description of the said property had been advertised for the period of — days in the —, a newspaper published in said county: And whereas, said sale was duly reported by said administrator, and, on the — day of —,

18—, the same was confirmed by an order of said Court : And whereas, the whole of said purchase money has been paid, and said Court, upon the application of said administrator, hath ordered a conveyance of said land to be made by said administrator, (*or, any other person who may be selected by the Court,*) to said purchaser thereof, according to law :

Now, therefore, this instrument witnesseth, that the said Jones, as such administrator, as aforesaid, HATH, in accordance with the order of said Court, last referred to, conveyed and confirmed, and by this instrument, DOTH convey and confirm, unto the said ———, his heirs and assigns forever, all claim, right, title and interest which the said Richard Rich, deceased, had, at the time of his death, in and to the lands aforesaid.

In witness whereof, the said administrator (*or, executor*) hath hereto affixed his hand and seal, this the — day of —, 18—.

Signed, sealed and delivered in  
the presence of,  
ANDERSON BOERAM,  
ABNER PLORNISH.

JOHN JONES, [L. S.]

[ No. 122. ]

FORM of ACKNOWLEDGMENT of CONVEYANCES.—Code § 1279.

*State of Alabama,* }  
*Mobile County.* }

I, Edwin Rust, Judge of the Court of Probate, in and for said county and State, hereby certify, that John Jones, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand, this the — day of —, A. D. 18—, at office, in the city of Mobile.

EDWIN RUST, Judge.

## [ No. 123. ]

FORM of PROBATE of CONVEYANCE, when ATTESTED by two WITNESSES.—Code § 1280 and 1281.

*State of Alabama,* }  
*Mobile County.* }

I, Edwin Rust, Judge of the Court of Probate, held in and for said county, hereby certify, that Abner Plornish, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn stated, that John Jones, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand, at office, in the city of Mobile, this the — day of —, A. D. 18—.

EDWIN RUST, Judge.

## [ No. 124. ]

PETITION to AMEND RECORD nunc pro tunc—as to MISTAKE in name.\*

To the Honorable Edwin Rust, Judge of the Court of Probate for the County of Mobile :

The petition of John Jones, administrator in this Court of the estate of Richard Rich, deceased, respectfully shows unto your Honor, that on the — day of —, 18—, he filed a petition in said Court against the widow and heirs of said decedent, praying for an order for the sale of the real estate of the said decedent, which petition has been duly granted, though no sale of said land has as yet been made—to which petition, and all the orders and proceedings thereon, now

\* This petition is for an amendment as to a mistake in the Christian name of one of the parties. There is no reason why the power to amend, in a proper case, should not extend to other errors as well. For general directions see 9th Porter, 163 and 446; 2 Ala. 164; also 2 Stew. 470; 10 Ala. 375; but also see 15 Ala. 79.

remaining of record in this Court, your petitioner here refers, that the same may be taken as part of this petition.

Your petitioner further states, that in said petition, and in the orders, process and proceedings thereon had, Charlotte Rich, one of the children and heirs of said deceased, is erroneously, and by a clear mistake, called Carlotte, instead of Charlotte, her real name.

Your petitioner further states, that said Charlotte is under the age of fourteen years; that she resides with Mrs. Mary Rich, her mother, in this county, where she resided at the time the process under said petition was issued and served; that the process under said petition was duly served on said Mary Rich, as the custodian of, and for the said Charlotte, though by the wrong name of Carlotte, aforesaid; that after such service A. B. was appointed and consented to act, and that he has acted up to this time, in all matters and proceedings pertaining to said petition, as the guardian *ad litem* of and for the said Charlotte, though by said wrong name, as aforesaid.

Your petitioner further states, that the right name of the said heir appears in the petition which was originally filed in said Court for the letters of administration upon said estate, heretofore granted to petitioner, and in the depositions taken in the proceedings had on the said petition for the sale of said real estate—all of which are of record in this estate, and to which reference is prayed, for the purpose of amending and correcting said mistake.

In consideration of all which, to the end that the sale of said land hereafter to be (*or*, which has heretofore been) made shall not be injured by reason of said mistake, and so that said record and proceeding shall not cause unjust question and litigation hereafter, your petitioner prays your Honor to order and allow said mistake of name to be amended and corrected, *nunc pro tunc*, in said petition and proceedings, wherever it occurs, so that the entire record of the matters in said Court, which pertain to said estate, shall

be correct and uniform as to the names of the heirs thereof. Your petitioner further prays, that said Charlotte may be duly cited, according to the rules and practice of said Court, to show cause, if any there be, why said amendment and correction should not be made, as prayed for by petitioner. And as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

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[ No. 125. ]

ORDER setting day to hear PETITION to AMEND the RECORD *nunc pro tunc*, &c.

*Richard Rich, deceased, Estate of,* }  
*As to amending Record.* }

18

This day came John Jones, administrator of said estate, and filed his written application under oath, for an amendment *nunc pro tunc*, of the record in this estate, relating to the petition for the sale of the land of said decedent, and the orders and decrees thereon heretofore made in this Court, so that wherever the name Carlotte appears, the name of Charlotte, shall be substituted in the stead and place thereof; alleging, in said petition, among other things, that the designation of Carlotte occurs by mistake, and should be Charlotte, the latter being the true name of the heir of the deceased, intended and referred to in said petition by the said name of Carlotte. It is, therefore, ordered, that said matter be set down for hearing on the — day of —, 18—, and that Mary Rich, the widow of said decedent, and the custodian of said minor, and A. B., the guardian *ad litem*, who was heretofore duly appointed to act for the minor called, in said petition, by the name of Carlotte, and who has heretofore acted as such guardian, in all matters pertaining to said petition for the sale of the land, and the said orders and decrees

thereon, have due notice, by citation to be personally served on them, notifying them of the filing of said application for such amendment, and of the day set for the hearing thereof, so that they may appear and contest said application for amendment, if they shall think proper, and so that the said A. B., as such guardian, shall be required to appear, on said day of hearing, in behalf of said minor, and to deny in writing the allegations of said application for an amendment, and otherwise to attend to the interests of said minor in this matter, so that right and justice shall be done in the premises without detriment to the claims of said minor.

*The command in the citation to the mother would be—"to cite Mary Rich, as the mother and custodian of the person of Charlotte Rich, a minor;" and for the guardian ad litem it would be—"to cite A. B., as the guardian ad litem, heretofore appointed for Charlotte Rich, a minor." The object of the citation may be set forth in the process as follows, viz: "to show cause, if any there be, why the record of all the proceedings heretofore instituted and had in said Court for the sale of the lands of Richard Rich, deceased, should not be amended and corrected, nunc pro tunc, so that the name of Charlotte, one of the minor heirs of said deceased, shall appear in the place and stead of Charlotte Rich, in the petition for said sale, and in all proceedings and process relating thereto, wherever the name of Charlotte occurs, in accordance with the prayer of the petition of John Jones, the administrator of said estate, which is now on file in the said Court, and in which it is alleged that Charlotte is the true name of the heir intended instead of 'Charlotte.'"*

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[ No. 126. ]

ORDER to AMEND RECORD nunc pro tunc.

<i>Richard Rich, deceased, Estate of, }</i>	18
<i>Order to amend Record. }</i>	

This being the day which was appointed by this Court to hear the application of John Jones, filed by him as the administrator of said estate, and praying for an amendment and correction of the petition and of all proceedings and process thereon, pertaining to an order for the sale of the lands of said deceased, the order for which sale has been heretofore granted in this Court, now comes the said administrator and also comes A. B., the guardian *ad litem*, heretofore duly appointed to attend to the interests of the minor heirs of said deceased, and who now appears in open Court and

files his answer, as such guardian, denying in writing, the allegations of said application for an amendment; and, it being shown, from the papers on file, to the satisfaction of the Court, that Mary Rich, the widow of the deceased, and the mother and custodian of Charlotte Rich, a minor heir of the deceased, who is under the age of fourteen years, has been duly cited in strict accordance with the terms of the order of Court, in this proceeding, made and entered on the — day of —, 18—, on motion of said administrator the Court now proceeds to the reading of said application, and to hear the proof to be submitted in relation thereto. And, it being shown to the satisfaction of the Court, that the name of one of the infant heirs of said decedent is Charlotte, and that said deceased had no child or heir named Carlotte; and that the process and citation issued on the petition of said administrator for the sale of the real estate of the said deceased, was in fact duly served on the said Mary, who was then, as now, the custodian of the person of her said daughter, and that said A. B. was in fact appointed by this Court to defend, and that he has appeared and acted for, said Charlotte in all matters pertaining to said petition for the said sale of land, and that in said petition for the sale of land, and in the proceedings under it, the said infant heir was by mistake called Carlotte: And it further appearing to the Court from an inspection of the petition for the grant of letters of administration on said estate, and from the depositions taken on said petition for the sale of land—all of which are of record in this Court, and constitute parts of the records of the proceedings had in this estate—that the right name of said infant heir, as stated in said application for an amendment, appears in the record: It is ordered and decreed by the Court, that the said mistake of name in the said petition for sale of real estate, and in the proceedings and orders had thereon, be corrected and amended, *nunc pro tunc*, wherever it occurs, by inserting the true name of said infant heir Charlotte in place of Carlotte wherever it occurs,

and\* that the sale of said real estate be proceeded with, and made in pursuance of the decree of this Court heretofore granted for that purpose.

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[ No. 127. ]

PETITION of PURCHASER to have a MISTAKE corrected as to the number, &c., in the description of LAND, and for TITLE.—Pamphlet Acts 1851-'52 ; No. 81, page 86.†

*State of Alabama,* }  
*Mobile County.* } In the Probate Court.

To the Hon. Edwin Rust, Judge of said Court :

The petition of John Johnston respectfully represents unto your Honor, that at the sale of the real estate of the late Richard Rich, deceased, made, on the — day of —, 18—, under the order of said Court, by John Jones, the administrator of said estate, he your petitioner, became the purchaser of lot number three, east side of Fourth street, in Citronelle, and not of lot number two, east side of Fourth street, in Citronelle, as was heretofore erroneously reported to your Honor, by said administrator.

Your petitioner further states, that said sale to him of said lot, numbered three, was made *bona fide* ; that possession of said lot number three accompanied said sale to your petitioner, and that the whole amount of money to be paid by your petitioner for the purchase of said lot has been duly paid.

Your petitioner, therefore, prays that said mistake in describing said land by its number may be corrected, and that

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\* If the order is made after a sale this conclusion will be omitted, of course.

† The act here referred to was undoubtedly drawn to suit some particular case, the natural consequence of which is, that, as a law for general relief, in cases of mistake, it is utterly defective. In its present form it can be of no general utility. The purpose of the law is good, however, and should suggest the propriety of an act to be more general in its relief, and more careful in its phraseology.



said administrator may be cited\* to answer this petition, and that your Honor will decree a conveyance of the proper title to your petitioner. And as in duty bound, &c.

JOHN JOHNSTON.

Subscribed and sworn to, &c.

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[ No. 128. ]

ORDER upon PETITION to correct a MISTAKE in describing LAND by its NUMBERS.

<i>Richard Rich, deceased, Estate of,</i>	} 18
<i>Order to correct mistake and to make title.</i>	

Citation having been heretofore issued upon the petition and oath of John Johnston, to be served upon John Jones, the administrator of said estate, calling upon him to appear in Court this day, and show cause, if any exists, why he should not duly convey the title to lot number three, east side of Fourth street, in Citronelle, to John Johnston, who, in his petition now on file, claims to have been the *bona fide* purchaser thereof from said Jones, as administrator of the estate of Richard Rich, deceased, and why the report of said administrator, of said sale of real estate of said decedent should not be so amended and corrected as to show that said Johnston became the purchaser at said sale of said lot number three, and not of lot number two; said petition alleging that said number two, appears in said report by a mistake in describing said land by its numbers; and said administrator now appearing, and having filed his answer to said petition and citation, admitting the occurrence in the said report of sale of a mistake in the description of the land sold to the petitioner and consenting that such mistake may be now corrected; and it having been shown to the Court, by satisfactory evidence, that said sale was made *bona fide*; that

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\* The proper form for filling up the citation in this case will be found embodied in the order upon the foregoing petition. See next form.

possession of said lot number three accompanied said sale; that such mistake actually occurred in the description of said land by its numbers, and that all of the purchase money due from said Johnston on said sale of land has been duly paid: It is ordered and decreed by the Court, that said mistake be corrected, and that said report of sale be amended so as to make said Johnston purchaser of said lot number three in lieu of said lot number two. It is further ordered and decreed, that said Jones, as such administrator, do forthwith make the proper title to said lot number three to said Johnston. It is further ordered, that said petition and answer be recorded.

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[ No. 129. ]

PETITION of WIDOW or CHILD to have five hundred dollars in value of the LAND SET OFF, &c., where all the REAL PROPERTY is to be sold to pay DEBTS.—Code § 1738, subdivision 6.\*

*State of Alabama, }*  
*Mobile County. }*

To the Hon. Edwin Rust, Judge of the Probate Court in and for said County and State:

The petition of Olivia Rich, respectfully sheweth unto your Honor, that she is the widow of Richard Rich, deceased, whose estate is now being administered in this Court, by John Jones, as the administrator thereof, (*or, as the executor of his last will and testament, as the case may be.*)

Your petitioner further states, that the said Jones hath filed his application to your Honor, for an order to sell all

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\* The foregoing petition and succeeding orders, citation, &c., need not necessarily be resorted to. The representative or the widow, might select, and have the land set off and appraised, without an appeal to the Court; but the course marked out by these forms is believed to be the most proper, and best calculated to guard against error, and to secure the rights of all concerned against frauds and unjust prejudices or partialities in the allotment made.

Again, if the representative proceeds upon his own motion, he takes upon himself the responsibility of deciding "that it is necessary to sell all the real property for the payment of debts," as, unless it is first ascertained, by the

the real property of said estate to pay debts, which application is now pending and set down for hearing on the — day of —, 18—.

Your petitioner further states, that the names of all the children of said deceased, and all of whom were under the age of twenty-one years at the time of the death of said decedent, are correctly set forth, in said application to sell the lands; and that said children and petitioner were members of the family of said decedent at the time of his death.

Your petitioner further shows unto your Honor, that she is entitled to select, and to have set off by metes and bounds, real estate to the value of five hundred dollars, to include the homestead, or such portion of the same as can be selected without injury to the remaining portion of the estate, (*or*, that inasmuch as no part of the homestead can be properly selected—*or*, there being no homestead belonging to the said estate—she is entitled to select, and to have set off by metes and bounds, from other lands of said estate, real property, not exceeding the value of five hundred dollars) to be estimated by the persons heretofore appointed to appraise said estate, the same to be exempt from sale; and the title thereto to vest in your petitioner, and the said children of said decedent.

Your petitioner further states, that she is unacquainted with the value of land, and does not know how a proper

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Court, or in some other way, that such necessity exists, such a provision for the widow or children is not authorized by law. Under any circumstances it is manifest that the widow can seldom have the requisite knowledge as to the debts, or as to the value of the personal property to enable her to pass upon the question of necessity. By the mode here proposed the spirit and the letter of the statute would seem to be sufficiently complied with, inasmuch as the representative in making the selection at the instance of the widow, acts as her agent, (see Confirmation, Form No. 134) though also under an authority from the Court. And, as our law now gives the possession of the land to the representative to rent out, and to sell to pay debts—in fact, gives him the control of the lands of the decedent—he is very likely to be much the most capable of meting out justice to all interested. Besides, so far as the widow's interest, in the land selected is concerned, she ought to receive some muniment of title—such as a deed—and it would always be well for even the heir to have the certificate or deed of the representative, that he may have record evidence of the selection, and of his right, against any subsequent pursuit by a creditor, or any other person.

selection can be made so as to do least injury to said estate ; and, as the real property of said estate is in the possession said Jones, that she is unable to make such selection in a proper manner ; or to have the same properly valued, or set off by metes and bounds, as the law requires, and so as to do as full justice to said estate, to said children, or to herself, as she is satisfied would be done to all whose interests are involved in such proceedings, if said Jones should be authorized to make such selection.

Your petitioner further states, that said Jones hath signified his willingness to act in the premises aforesaid, if your Honor shall think proper so to order, upon this your petitioner's application : Wherefore, your petitioner prays, that said Jones may be authorized, by an order of said Court, to select the real estate to which your petitioner and said children are entitled, as aforesaid, and to have the same duly estimated and set off by metes and bounds. And as in duty bound, &c.

OLIVIA RICH.

Subscribed and sworn to, &c.

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[ No. 130. ]

ORDER setting DAY to HEAR PETITION of the WIDOW or CHILD, under Code § 1738, subdivision 6.

<i>Richard Rich, deceased, Estate of,</i>	}	18
<i>As to homestead of.</i>		

This day came Olivia Rich, the widow of said intestate, and filed her petition in writing, duly sworn to, alleging that the application of John Jones, the administrator of said estate, is now pending in this Court, and set down to be heard on the — day of —, 18—, for an order to sell all the real property of said decedent to pay debts, and praying that five hundred dollars, in value, of said real estate, may be set off, according to the provisions of subdivision six, of section one thousand seven hundred and thirty-eight of the Code, for, and

the title to be vested in her, the petitioner, and in the children of said deceased, all of whose names are set forth in the said application of said administrator. And the Court having read said petition of said widow, in which it is stated, among other things, that she cannot make such selection properly, and that said administrator has consented to act in the premises for her: It is ordered, that the matter of her said petition be set for hearing on the — day of —, 18—, and that said administrator have two days\* notice of said day set for such hearing, and of the nature of said petition which is to be then heard, in order that he may inform the Court whether or not there is any legal objection to such selection, and setting off, and as to his willingness to act in the premises.†

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[ No. 131. ]

ORDER that five hundred dollars in value of REAL PROPERTY be SET  
OFF for WIDOW and CHILDREN.

<i>Richard Rich, deceased, Estate of, }</i>	18
<i>As to homestead. }</i>	

This day having been set to hear the petition of Olivia Rich, the widow of said decedent, asking that real estate of said intestate, of the value of five hundred dollars, may be selected and set off to her and to certain of the children of

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\* A short notice is ordered because it is necessary that the petition should be finally disposed of, before, or, at all events, by the day set for hearing the administrator's application to sell.

† *The citation would be*—to show cause, if any he has, why the petition should not be granted, as this day filed by Olivia Rich, the widow of the deceased, praying that five hundred dollars, in value, of the real estate of the deceased, may be selected by him and be set off by metes and bounds, to her, said petitioner, and to the children of said deceased, who are named in said petition, upon the ground that said administrator has applied for an order of sale, and that it is necessary to sell all the real estate of the deceased to pay debts, and according to the provisions of subdivision six, of section 1738, of the Code of Alabama.

With slight changes these forms can be used by one of the children as well as by the widow.

said decedent, who were under the age of twenty-one years, and who, together with your petitioner, were members of his family at the time of the death of decedent, under subdivision six, of section one thousand seven hundred and thirty-eight of the Code, John Jones, the administrator of said estate, having applied for an order to sell all the real property of said estate, upon the ground that such sale is necessary to pay debts, which application is now pending in this Court: Now comes the said Olivia, and moves the Court, that her said petition may be granted; and also comes the said John Jones, and it appearing to the Court, from the proof now made, that the allegations contained in said petition are true; that it is necessary to sell all the real property to pay the debts of said decedent, and that said Olivia cannot properly make such selection and have such selected lands estimated and set off, and the title properly vested in herself and in said children; and said Jones now consenting, in open Court, and signifying his willingness to act in said premises, for her: It is ordered, adjudged and decreed by the Court, that said administrator be, and he is hereby authorized to proceed forthwith to select real estate, to include the homestead, or such portion thereof as can be selected without injury to the remaining portion of the real estate; or if no part of the homestead can be selected with propriety, or if there is no homestead, then the said administrator is directed to select from the other lands of said estate, to be set off by metes and bounds, and in no event to exceed in value the said sum of five hundred dollars; and the said administrator is further directed, to have the value of the said lands, so selected by him, estimated under oath, and in writing, by the persons heretofore (*or, now, as the case may be—Code § 1733*) appointed to appraise said estate, and to return into Court said sworn estimate, together with his own report in the premises, on or before the — day of —, 18—. (*Naming some day, if possible, before the day for the final hearing of the administrator's petition to sell.*)

## [ No. 132. ]

REPORT of an ADMINISTRATOR or EXECUTOR showing that he has SET  
OFF LAND for the WIDOW and CHILDREN.—Code § 1738, sub. 6.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Pro-  
bate of said county:

The report of John Jones, the administrator of the estate of Richard Rich, deceased, respectfully shows unto your Honor, that in accordance with the wish and request of Olivia Rich, the widow of Richard Rich, deceased, and in obedience to the authority of said Court, granted and entered of record in said estate, on the — day of —, 18—, (*or, if the selection is made without an order of Court, allege, instead of the above, that it having been found necessary to sell all the real property of said estate to pay debts, in obedience to the provisions of the Code in such cases made,*) he selected for Olivia Rich, the widow, and for the children of said deceased, real estate, the value of which does not exceed five hundred dollars, as is shown by the sworn estimate of the appraisers thereof, which estimate is hereto attached and filed, as part of this report. Said land does not include the homestead—(*or, such land does include the homestead, varying the following allegations to suit the fact,*) as the appraisers valued it at more than five hundred dollars, nor any portion of the same, inasmuch as it could not be divided without injury to the remaining portion of the estate, but the same has been selected from the other lands of the estate. All of which is respectfully submitted for the approval and other action of the Court in the premises.

JOHN JONES.

Subscribed and sworn to, &c.

## [ No. 133. ]

## ESTIMATE of APPRAISERS of LAND to be SET OFF to the WIDOW and CHILDREN.

*State of Alabama, }  
Mobile County. }*

The undersigned, who were heretofore appointed, by the Probate Court of said county, appraisers of the estate of Richard Rich, deceased, whereof John Jones is administrator, hereby certify, that, the homestead of said estate is worth more than five hundred dollars, and that the same cannot be properly divided ; and that they have viewed, examined and estimated the value of that certain other piece of land, and the improvements thereon, belonging to the estate of said decedent, and described as follows, to wit: (*Here insert a full description of the land set off*)—and now state, that the true value of said last named land and improvements does not exceed the sum of five hundred dollars, according to their best judgment, after obtaining the fullest information on the subject, which was accessible to them.

A. B. }  
C. D. } Appraisers.  
E. F. }

Subscribed and sworn to, by A. B., C. D. and E. F., before me, &c.

## [ No. 134. ]

## ORDER CONFIRMING the action of the REPRESENTATIVE, and ordering him to CONVEY.

*Richard Rich, deceased, Estate of, }  
Order for deed to widow and children. }*

18

This day comes John Jones, the administrator of said estate, and files his report, accompanied by the estimate of the appraisers, showing that he has selected, according to the decree of this Court, made on the — day of —, 18—, for the



widow and children of said decedent, the lands of said estate, described as follows, viz: (*Insert description as furnished by appraisers.*) And it appearing to the Court, from the proof submitted, that said selection and estimate, of the value of said land, have been fairly made, and in accordance with law in such cases; and from the estimates of the appraisers, made under oath, and which is on file, that said land, with the improvements thereon, does not exceed the sum of five hundred dollars in value; and that such selection has been approved and adopted by said widow as her own: It is ordered and decreed, that all and singular, the entire proceedings in this behalf be, and the same are hereby confirmed; and the said Jones is hereby directed and required, so soon as it shall be found, by the decree of this Court, necessary to sell all the real property of said estate to pay debts, to execute and deliver a proper deed, conveying all right, title and interest which the deceased had in such lands at the time of his death, jointly, to Olivia Rich, the widow of said deceased, and to —, — and —, who are all the children and members of the family of said deceased who were under the age of twenty-one years, at the time of his death, and to omit said land from any sale hereafter to be made by him. It is further ordered, that the petition filed in this proceeding, and all other writings pertaining to the same, be recorded for future reference.

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[ No. 135. ]

DEED of LAND, or HOMESTEAD, worth five hundred dollars to WIDOW and CHILDREN.

*State of Alabama,* }  
*Mobile County.* }

Whereas, Olivia Rich, the widow of Richard Rich, deceased, heretofore filed her petition to the Honorable Edwin Rust, Judge of Probate in and for said county, and State, praying that the administrator, in said Court, of the estate

of said decedent, might be authorized by an order of said Court to select and set off by metes and bounds, for said widow and for the children of said deceased, real property belonging to said estate, not to exceed in value the sum of five hundred dollars, by virtue of, and in accordance with the provisions of subdivision six, of section one thousand seven hundred and thirty-eight of the Code of Alabama: And, whereas, such selection was made, according to the prayer of said petition, the order of said Court thereon, and of the said provisions of law, which proceeding and selection was duly approved and confirmed in said Court, by its decree in the premises, on the — day of —, 18—, in and by which decree said administrator is directed and required, so soon as it should be found, by the decree of said Court, necessary to sell all the real property of said estate to pay debts, to execute and deliver a proper deed, so as to vest the title to the land so selected, &c., jointly in said widow and said children: And, whereas, said administrator, in and by a decree of said Court, made and entered on the — day of —, 18—, hath been duly ordered to sell all the real property of said estate for the express purpose of paying debts: Now, therefore, this instrument witnesseth, that John Jones, the administrator of said estate, in consideration of the premises, and under said decrees of said Court, hath conveyed, and by this instrument doth convey and confirm unto said Olivia Rich, the widow, and unto —, — and —, the children of said decedent, the land, so selected and set off, as aforesaid, which is located and described by metes and bounds as follows, to wit: (*Here describe the land*)—together with all and singular the improvements thereon, and all claim, right, title and interest which the said Richard Rich, deceased, had at the time of his death, in and to the lands aforesaid.

In witness whereof, the said administrator (*or*, executor) hath hereto affixed his hand and seal, this the — day of —, 18—.

JOHN JONES. [L. S.]

As to proof or acknowledgment of deed, see Nos. 122 and 123 of these forms.

## [ No. 136. ]

PETITION that an EXECUTOR or ADMINISTRATOR be required to give  
ADDITIONAL SECURITY.—Code § 1697, et seq.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Pro-  
bate for said County :

G. H., an heir at law (*or, a creditor—or, a legatee—or, a devisee, mentioned in the last will and testament—or, any other interested person—Code § 1698*) of C. D., deceased, respectfully represents unto your Honor, that A. B., on the — day of —, 18—, being appointed by said Court to be the administrator of the estate (*or, having accepted the trust of an executor of the said last will and testament*) of the said C. D., deceased, gave bond for the faithful performance of his trust, as by law required, for the sum of ——— dollars; and that the sureties named in said bond, viz : ——— and ———, are, as petitioner believes, evidently insufficient for the purpose thereof—(*or, state any fact under § 1697 of the Code.*)

Your petitioner therefore prays your Honor, that the said A. B. may be required to give an additional bond, with sufficient security, or, on failure thereof, that your Honor will remove him from said office, and appoint some other person in his stead, agreeably to the law of this State in such case made and provided. And as in duty bound, &c.

G. H.

Subscribed and sworn to, &c.

## [ No. 137. ]

ORDER setting day to hear and determine as to additional SECURITY.  
Code § 1697, et seq.; § 1708, et seq.

C. D., deceased, Estate of, } 18  
As to additional securities. }

A. B. having heretofore been duly appointed by this Court to administer upon said estate, with C. H. and E. F. as his sole securities in his administration bond, and G. H. a creditor of said estate—(*or, any person mentioned in § 1698*)—having this day filed his written application under oath, alleging, among other things—*set forth any fact warranted by § 1679 of the Code, and as the same is alleged in the petition*)—and praying that said A. B. may be duly required to give an additional bond for the performance of his duties as such administrator, or be removed, on failure so to do: It is ordered, that the matter of said application be set for hearing on the — day of —, 18—, and that said A. B. have notice of the said matter hereinbefore set forth, and of the day set for the hearing thereof,\* five days (§ 1700) before the same is heard.

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\* If the representative is out of the State, (§ 1701) from this reference mark, proceed as follows, viz: “by publication for three successive weeks in the —, a newspaper published in this county.”

The following would be a proper form for such publication, viz:

State of Alabama, } Probate Court. 18  
Mobile County. }

C. D., dec'd. } This day came G. H. a creditor of said estate, and filed his  
Estate of. } application in writing and under oath, praying that A.B. the administrator of said estate, in this Court, may be required to give an additional bond, upon the ground that E. F. a security in the original bond, has since departed this life:—It is ordered, that the — day of —, 18—, be appointed a day for hearing said application, at which time the said A. B. and all persons interested, can appear and contest the same, if they think proper.

E. RUST, Judge.

If citation is issued it should be—“to show cause, if any he has, why he should not be required to give an additional bond as administrator, in said Court, of the estate of C. D., deceased, in accordance with the prayer of the application of — —, (*naming the petitioner,*) which application is now on file.”

## [ No. 138. ]

ORDER APPROVING ADDITIONAL BOND, filed upon PETITION to, but  
without an ORDER of COURT.

*C. D., deceased, Estate of, }  
As to additional bond. }*

18

An order of Court having been entered in this estate on the — day of —, 18—, requiring A. B. to appear and show cause, if any he had, why he should not be required to give a bond, as administrator of said estate, additional to the one heretofore given by him in such capacity, this day comes the said A. B. in obedience to the notice to him, heretofore duly given in pursuance of said order, and files such an additional bond in the sum of ——— dollars, with L. M. as the additional security therein. And the Court being satisfied that said additional surety is sufficient: It is ordered, adjudged and decreed, that said additional bond be, and the same is hereby accordingly approved, and ordered to be recorded—(*and if the order to show cause was not the voluntary act of the Court, but was made upon a petition add*)—together with the application of G. H. heretofore filed in the premises.

The preceding form, is framed to meet a case where there is no question made by the representative as to the propriety or necessity of demanding an additional bond. The next form contemplates the case where a hearing is had, and a judgment is rendered by the Court, requiring an additional bond.

The decretal part of the above order will answer in other cases, as well as where the bond is given under the requisition of the Court—the recital of facts must of course vary with the different circumstances. It will be unnecessary, therefore, to recapitulate a form for the approval of an additional bond in any other place.

## [ No. 139. ]

ORDER requiring ADDITIONAL BOND, upon APPLICATION of a third person, and allowing TIME to give the same.—Code § 1706.

*C. D., deceased, Estate of, }  
Requiring additional bond. }*

18

This being the day duly appointed for A. B., the administrator of said estate in this Court, to appear and show cause why he should not be required to give a bond, additional to the one heretofore filed by him, as such administrator, agreeably to the application heretofore duly filed by G. H. as a creditor of said estate, now comes the said G. H. and moves the Court to proceed with the hearing of said application. And the said A. B. now personally appearing, (*or, if he has been notified and fails to appear proceed thus*: And it appearing to the Court from an inspection of the citation on file—or, by due proof, *if the notice was given by publication*—that said A. B. has had notice of the filing of said application and of the time set for hearing the same, in all respects according to law, and strictly as required by the former order of Court, made and entered in the premises on the — day of —, 18—,) the Court proceeds to hear said application, and the proof. And, now, the Court having heard and maturely considered said application, and being fully satisfied, from the proof submitted in the premises, that said application ought to be granted: It is ordered, adjudged and decreed, that said A. B., be, and he is hereby required to give a bond, as such administrator, additional to the one heretofore given by him. It is further ordered, that said A. B. have until the — day of —, 18—, in which to obtain the necessary security, and to give such additional bond.

Code § 1707—If the above order is not complied with the representative must be removed. An order of removal will be found elsewhere, which, with slight variations as to the recital of facts, will answer in this case.

If a bond is filed the preceding entry, No. 138, varying the recital of facts, is the proper form of approval.

## [ No. 140. ]

ORDER by the COURT requiring ADDITIONAL BOND, upon its own motion.—Code § 1708.

*C. D., deceased, Estate of, }  
As to additional Bond. }*

18

A. B. having heretofore been duly appointed to administer upon said estate with C. H. and E. F. as his sole securities in his administration bond; and the said E. F. having since, as the Court is credibly informed, departed this life, (*or make any other allegation warranted by the Code § 1697, 1708,*) so that the said administration of said estate is probably not now secured (Code § 1683,) as is required by law: It is ordered by the Court, that said A. B. be notified to be and appear in this Court on the — day of —, 18—, to show cause, if any he has, why he should not be required to give bond, additional to the one which he has heretofore given, as such administrator as aforesaid; and that citation,\* duly notifying him of this order, be served on the said A. B., at least five days before the matter hereof shall be heard.†

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\* *The citation would be*—"to show cause, if any he has, why he should not be required to give a bond, as administrator of the estate of C. D., deceased, additional to the one heretofore given by him in such capacity."

† The next preceding order can easily be varied for the entry upon this proceeding, on the day of hearing, where the Court of its own motion, cites the representative to give additional bond—the draftsman bearing in mind that in this case the action of the Court is not invoked by any application.

## [ No. 141. ]

PETITION by SURETY to be DISCHARGED from BOND of Representative.  
Code § 1697, et seq.\*

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The petition of I. J. one of the securities in the bond of A. B. as administrator in this Court of the estate of C. D., deceased, respectfully shows unto your Honor, that the said A. B. has become (*or, is likely to become*) insolvent as he verily believes, and that petitioner has sustained (*or, as he verily believes, he probably will sustain*) loss thereby.

Your petitioner therefore states, that he is unwilling longer to remain on said bond as the security of the said A. B., as such administrator, and now prays your Honor to set a day for the hearing of this application, and of the evidence which may be submitted in the premises: that your Honor will cause the said A. B. to have the notice in the premises which the law requires in such cases; (*see Code § 1700,*) and will be pleased to make such orders as may be necessary and proper to effect your petitioner's release from said bond in due form of law. And as in duty bound, &c.

I. J.

Subscribed and sworn to, &c.

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\* This form is given merely as an example of what would be the general requisites of a petition under § 1697, and not as covering the whole ground, nor any considerable part of it, which might properly be relied upon by the various applicants enumerated in § 1698.



## [ No. 142. ]

ORDER setting day to hear Petition of SURETY of Representative for  
DISCHARGE from BOND.—Code § 1700-'1.

*C. D., deceased, Estate of, }*  
*As to additional Bond. }* 18

This day comes I. J. and files his application in writing and under oath, alleging, among other things, that he is a security in the bond filed by A. B., as the administrator in this Court of the estate of C. D., deceased, which bond was given by said A. B. to secure the performance of his duties as such administrator; that the said A. B. has become insolvent, (*following the allegation of the petition,*) and that he, the petitioner, has sustained loss thereby; (*here again follow the petition*) and praying to be released and discharged from further liability on said bond: It is, therefore ordered, that the — day of —, 18—, be set to hear said application and the proof which may be made; and that citation to said administrator, to appear and answer said application, be served on him five days before the hearing of the said complaint.

*The citation would be, "to answer the application, this day filed by I. J., one of the sureties in this Court upon his bond as administrator of the estate of C. D., deceased—said application alleging, among other things, that said A. B. has become insolvent, and that he, the said I. J., has sustained loss thereby."*

## [ No. 143. ]

ORDER requiring a NEW BOND from the Representative, upon the APPLICATION of the SURETY, in the first.—Code § 1657, et seq.; also, see § 1715-'16.

*C. D., deceased, Estate of, }*  
*Requiring additional bond. }* 18

This being the day set to hear the application of I. J., one of the securities of A. B. in his bond as the administrator in this Court of said estate, praying to be released and discharged from said bond, now comes the said I. J. and moves

the Court to hear said petition and the evidence to be ad-  
 duced; and it being shown to the satisfaction of the Court,  
 that notice has been given by service of citation as required  
 by law, and in strict conformity to the terms of the former  
 order of this Court, made and entered in the premises on  
 the — day of —, 18—, the Court now proceeds to hear  
 the proofs. And it being shown, by sufficient evidence, that  
 said administrator is insolvent, (*or, according to the proof,*)  
 and that said I. J. has been subjected to loss by reason of  
 his said suretyship upon said bond: It is ordered, adjudged  
 and decreed, that said A. B., be, and he is hereby required  
 on, or before the — day of —, 18—, to file a new (*see Code*  
*§ 1715-'16,*) bond, in the place and stead of his first, (*or,*  
*former*) bond—said new bond to be conditioned to perform  
 his duties as such administrator, and in such language as the  
 law directs. It is further ordered, that said application, and  
 all other papers on file relating to this proceeding be re-  
 corded.

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[ No. 144. ]

ORDER REMOVING the REPRESENTATIVE for his failure to give a NEW  
 or ADDITIONAL BOND.

*C. D., deceased, Estate of, }*  
*Removal of Administrator. }*

18

A. B. the present administrator of said estate, having been  
 duly and regularly required by an order of this Court, on or  
 before the — day of —, 18—, to give a bond, as such  
 administrator, additional to that which was heretofore given  
 by him in that capacity, (*or, a new bond, in the place*  
*and stead of his first—or, former bond; if there has been more*  
*than one given*) and the said period of time, so appointed  
 for said A. B. to give such bond, having now elapsed; and  
 the said A. B. having neglected and failed to file any bond  
 in accordance with law and the requirements of said order:

It is adjudged and decreed by the Court, that said A. B. be, and he is hereby removed from his said office of administrator of said estate, and that the letters of administration heretofore issued to him upon said estate, be, and the same are hereby vacated, revoked and annulled.

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[ No. 145. ]

ORDER APPOINTING ADMINISTRATOR after the removal of a former Administrator.

<i>C. D., deceased, Estate of,</i>	}	18
<i>Appointment of new Administrator.</i>		

It being known to the Court that A. B. was removed from the administration of said estate, and his letters revoked on the — day of —, 18—, and that said administration of said estate, now remains open and vacant; and no other person having prior title thereto, having applied for leave to administer upon said estate: Now, upon the petition of G. H. a creditor of said estate; he having given bond, as the law requires in such cases, in the sum of ——— dollars, with F. O. and C. P. as his securities therein, which bond has been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, that said G. H. be, and he is hereby appointed administrator *de bonis non* in and upon said estate, which remains unadministered. It is further ordered, that an appraisement of said estate be made; that I. J., L. M. and O. P. be (*conclude as in form 80, page 81.*)

## [ No. 146. ]

PETITION by a CREDITOR to have the LETTERS of REPRESENTATIVE  
REVOKED for REMOVAL from the State.—Code § 1696, et seq.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Pro-  
bate in and for said County and State :

The petition of G. H., a resident of ———, respectfully  
represents unto your Honor, that he is a creditor of the es-  
tate of C. D., deceased ; that his just claim now remains un-  
satisfied ; that A. B. was heretofore duly appointed by, and  
qualified in said Court as the administrator of said estate,  
as will appear by a reference to the records of said Court ;  
that said administrator has removed from this State without  
having completed said administration, and without having  
made final settlement of his administration accounts.

Wherefore your petitioner prays that such proceeding  
shall be had by your Honor as shall be requisite and neces-  
sary to have the said A. B. removed from said administra-  
tion and his letters duly revoked. And as in duty bound, &c.

G. H.

Subscribed and sworn to, &c.

## [ No. 147. ]

ORDER setting DAY to HEAR PETITION for REMOVAL of REPRESENTA-  
TIVE.—Code § 1701.

*C. D., deceased, Estate of,* }  
*As to removal of Representative.* }

18.

This day came G. H. and filed his application, in writing  
and under oath, alleging, among other matters, that he is a  
creditor of said estate, and that A. B. the administrator  
thereof, has removed out of this State, without having com-  
pleted his said administration, and without having made a  
settlement of the same, and thereupon, praying an inquiry,

and that said administrator may be removed. And it being shown, by proof, which is satisfactory to the Court, that said A. B. is not now in this State: It is, therefore, ordered, that the — day of —, 18—, be, and the same is hereby appointed a day for the hearing of said application, and for making such inquiry, and that notice\* of the filing of said application, and of this order thereon, be given by publication, to be continued for three successive weeks, in the —, a newspaper published in this county.

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[ No. 148. ]

ORDER REMOVING ADMINISTRATOR after PUBLICATION.

*C. D., deceased, Estate of, }*  
*Order of Removal. }* 18

This day having been regularly appointed for hearing the application of G. H., a creditor of said estate, heretofore filed in this Court, praying for the removal of A. B., the present administrator, in this Court, of said estate, upon the ground that he has removed from the State; now comes the said G. H. and moves the Court that his said application be granted; and it appearing to the satisfaction of the Court, by proof, that due notice of said application has been given, by publication for three successive weeks in the —, a newspaper published in this county, in accordance with the former order of this Court, made and entered in the premises on the — day of —, 18—. And it being further shown, by due proof, that the statements set forth in said application are true, and that the said administrator has removed permanently from this State, without having made any final settlement of his accounts as such administrator; and the said A. B., having wholly failed to appear or in any wise make answer

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\* The form of publication would be the same as that appended to form No. 137, with the exception that the requisition would be as to removal, and "upon the ground that he has removed from this State," &c.

to the said application: It is, therefore, ordered and decreed by the Court, that the said A. B. be removed from the further administration of said estate, and that his letters of administration upon the same be, and they are hereby revoked and set aside.

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[ No. 149. ]

DECREE by the Judge, STATING the ACCOUNT of REPRESENTATIVE, who has FAILED, for ONE MONTH after his REMOVAL, to file his accounts.  
—Code § 1876, et seq.

*Alfred Kleeck, deceased, Estate of, } 18*  
*Statement of Account.*

This day came G. K., who is the present administrator of said estate, and now moves the Court to proceed and state the account of Francis Kleeck, the former administrator of said estate in this Court; and it appearing to the Court, from an inspection of the record of proceedings had in this estate, that the said Francis has been removed from the administration of said estate, and his letters duly revoked by this Court, more than one month prior to this day, and that he has wholly failed to take any measures or proceedings to have the accounts pertaining to his said administration, and as to the assets of the deceased which have come into his possession, adjusted and settled according to law; the Court now proceeds to state said account against the said Francis Kleeck, as such administrator from the materials in the office of the Judge of this Court, and from such other information as may be accessible to the Court, charging him with such articles or moneys as have come into his hands, and crediting him with all the credits to which he may be entitled, so far as known to the Court, and which can be ascertained by any means of information in the possession of the Court. And said account being now so stated by the Court, shows that said Francis Kleeck has had in his hands

since the — day of —, 18—, the sum of — dollars ; and since the — day of —, 18—, the sum of — dollars ; and since the — day of —, 18—, the sum of — dollars, making in all the sum of — dollars, all being moneys of said estate, and with which, it appears to the Court, the said Francis is justly chargeable in his said administrative character, together with legal interest upon said respective sums from the said several dates at which it is ascertained, as above stated, that they were in the hands of said administrator, he, the said administrator, not having denied on oath, that he has used the whole or any part of such funds, nor stated any sum so used or not used. It is, therefore, ordered, by the Court, that said account be filed for inspection, exception and objection ; and that the — day of —, 18—, be set as a day on which to examine, audit and restate said account, if necessary. It is further ordered, that notice of the above proceeding and order be given by publication for three successive weeks in the —, a newspaper published in this county, calling upon all persons interested to appear in and before this Court on the said day above set for hearing the matters pertaining to such account, if they think proper ; and that — and —, who are the securities of the said Francis in his official bond, as such administrator, be notified of this proceeding and of the said day above set for the restatement and examination of said account, by citation, to be personally served on them at least ten days before the day of hearing, calling upon them to show cause, if any they have, why the Court should not render a decree against said Francis, and in favor of said G. K., as administrator *de bonis non* on said estate and successor to the said Francis, for said account, so stated, or as the same may be restated on said day, or on any other day to which the examining, auditing and stating of said account may be regularly continued.

## [ No. 150. ]

## FORM OF PUBLICATION.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*Alfred Kleeck, deceased,* } Francis Kleeck, administrator  
*Estate of.* } of said estate, having been removed from said administration more than one month since, and having wholly failed to file any account or to make any settlement of his said administration, the said Court this day proceeded to state said account from the materials in the office of the Judge thereof, and from such other information as has been accessible to the Court: It is, therefore, ordered, that the — day of —, 18—, be set as a day on which said account can be examined, audited and restated, if it shall be found necessary, at which time all persons in interest can appear, if they think proper, and make such showing and take such course as the law permits in such cases.

EDWIN RUST, Judge.

## [ No. 151. ]

FINAL ORDER, STATING and PASSING the ACCOUNT against a REPRESENTATIVE whose authority has ceased, from any cause.

*Alfred Kleeck, deceased, Estate of,* } 18  
*Account finally stated and decreed.* }

This being the day which was heretofore regularly appointed, by a former order of this Court, made and entered in the premises on the — day of —, 18—, to examine the account heretofore stated by the Court, against Francis Kleeck, as the former administrator of said estate, in this Court, and to audit and restate the same, if it should be found necessary, now comes G. K., administrator *de bonis non* of said estate, and moves the Court for a decree upon said account, as the same has been heretofore stated, against



the said Francis. And it appearing, by due proof, to the satisfaction of the Court, that citations have been served and notice given and published in all respects according to law, and as directed in the said former order of this Court, (*and if any persons appear according to § 1880 of the Code, such appearance should be here stated,*) and no exception or objection as to the said account, as heretofore stated by the Court, having been filed, and none being now made known to the Court, (*or, and U. T. and F. C., the sureties—or any other person—having filed exceptions and objections to said account, as heretofore stated, setting forth—here state substantially what is the nature of the exception taken—and said exceptions and objections having been read, and, together with the evidence submitted, fully considered and understood by the Court.*) It is ordered, adjudged and decreed by the Court, that G. K., as the administrator *de bonis non*, of said estate, do have and recover of and from the said Francis Kleeck, the sum of ——— dollars, that being the amount now adjudged by the Court to be due from said Francis, as such former administrator, to said estate, besides costs, and for which execution may issue.

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[ No. 152. ]

EXECUTION upon the foregoing DECREE.—Code § 1921.

*State of Alabama—Probate Court for the County of Mobile.*

To any Sheriff of said State, Greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements of Francis Kleeck, late of your county, you cause to be made the sum of ——— dollars, which lately in our Probate Court for said county, was decreed to be paid to G. K., as the administrator *de bonis non* of the estate of Alfred Kleeck, deceased, besides the sum of

— dollars costs, incurred in and about a certain proceeding as to the accounts of the said Francis, as a former administrator of said estate—(*or, whatever else may be the nature of the proceeding*)—whereof the said Francis was convicted, as appears to us of record; and that you have the said moneys before the Judge of our said Court on the — Monday of —, A. D. 18—; and have you then there this writ at the office of the Judge of said Court.

Witness, Edwin Rust, Judge of our said Court, at office, the — day of —, A. D., 18—.

Attest :

EDWIN RUST, Judge.

Compute interest from the — day of —, 18—.

EDWIN RUST, Judge.

[ No. 153. ]

PETITION of ADMINISTRATOR *de bonis non* that the REPRESENTATIVE of the DECEASED ADMINISTRATOR may be compelled to ACCOUNT.— Acts 1853-'4, p. 24; see 7 Ala. R. 617; 16 Ala. R. 104; 24 *ibid*, 516; 26 *ibid*, 682.

*State of Alabama,* } In the Probate Court.  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of said Court :

The petition of A. B., administrator *de bonis non* of the estate of C. D., deceased, respectfully shows unto your Honor, that E. F., now deceased, was, heretofore the administrator of said estate in this Court; that the said E. F. died without having made a final settlement with this Court of his said administration, and that G. H. is the executor of the last will and testament of the said E. F., deceased, in the Probate Court of the county of Wilcox, where the said G. H. now resides.

Your petitioner, further shows, that I. J. and L. M., who reside in this county, are the securities, in this Court, in the

bond of the said E. F., deceased, which was given by him as such administrator of the estate of the said C. D., deceased.\*

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\*It could not have been the design of the legislature to limit the account and settlement, contemplated by the act upon which this proceeding is based, merely to the unadministered assets of the first estate which may have gone into the hands of the personal representative of the administrator of such estate. Such a construction would, in most cases, defeat the avowed object of the act, which was, to enable the Court to effect a complete settlement in this summary way.—26 Ala. 684.

The substantial language of the act is, that such settlement shall be as full and complete a settlement of the accounts of the deceased administrator, as could have been made by him while he was living. It was to be "full," that is, to embrace every item of property which had come into the hands of the deceased administrator—whether it consisted of money, or other estate—so that it might be produced, or a showing be made as to how it had been disposed of. The settlement is authorized to be made as "completely," as if it had been made by the deceased in his lifetime. One of the objects of a judicial settlement is, after ascertaining the property, in specie, and the money, belonging to the estate, for which the deceased was properly responsible, to obtain such a decree therefor as may be enforced, not only against the estate of the deceased, but, also, against the securities, which he gave as a guarantee for for his faithful administration, and for a final account for all the assets. If the settlement had been made by the deceased in his lifetime, there could be no question as to the effect of the decree—the securities of the administrator would be absolutely bound by it.—See 4 Ala. R. 693, 607; 5 *ibid*, 117; 6 Porter, 219.

And the settlement made through this proceeding can not be effected "as fully and completely" as if it had been made by deceased while living, if it does not bind his securities. There can be no reasonable doubt, therefore, but that the legislature intended ultimate liability against the securities, to follow as a consequence of the decree under this act.

But the provision in the Code, by which execution is authorized to issue against the securities, on the return of "no property" against the principal, without notice, or any hearing, is of a stringent and summary character, and must, therefore, be strictly followed, and nothing be taken by construction. It only authorizes execution, upon such return, to be issued against the *principal* in the bond "and his securities"—Code § 1922. The provisions, therefore, of the section referred to, clearly would not justify this very summary process against the security in any case, except where his principal is the party condemned in the decree—it would not justify the issuance of such an execution on the return of "no property" as to the *administrator* of their principal. Such sureties did not agree to become bound in any way, nor to any extent, for the administrator of their principal. They did not guarantee his probity, his faithfulness, nor his capacity. The act under which this settlement is sought must, therefore, fail as regards execution upon the decree against the securities, for the above stated reason—that the law, which permits such an execution, must be literally pursued, and because the letter of that law does not cover the case made by the act.—16 Ala. R. 105.

But, do the same reasons apply, where the question is properly raised, as to the binding effect, upon the securities, of the decree against the administrator of their principal in the proceeding now in question? I think not. If I am correct, then, to that extent, the settlement may be made as fully and completely as it might or could have been made by the principal if he were living.

Section 1876 of the Code provides that where the authority of an administrator ceases, from any cause, it shall be his duty, within one month thereafter, to come in and file his accounts for a settlement of his administration. Though the language of this section is very broad, it is plain that the case of the death

Your petitioner further states, that the heirs at law and persons entitled to distribution of the estate of said C. D., deceased, are as follows, viz: (*Here name each person, stating the sex and residence of each, which, if any, are of unsound mind, or are married women, which are minors over fourteen, and which are minors under fourteen, and who has the custody of the latter.*)

Your petitioner, therefore, prays your Honor, that said G. H., as such executor, may be compelled to make settlement

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of an administrator does not come within its purview, since he who is dead can hardly be expected to appear and file his accounts with the Judge of the Probate Court; nor would the compulsory process of that Court, issued under § 1878, be likely to be of any avail in enforcing the orders of the Judge in the premises. The Codifiers, in the use of the universal phrase—where the authority “*ceases from any cause*”—show, clearly, that their object was to provide for a final settlement in the Probate Court in every possible contingency. Death, however, is found to be one of the contingencies which escaped their direct attention, and, is, by construction, necessarily excluded from the operation of terms, which were intended to comprehend all cases of the cessation of such representative authority. The act, then, of 1854, was undoubtedly intended to supply the omission in the provisions of the Code, above referred to.

Viewing the act in this light, it becomes proper to look at the provisions of § 1876, and what follows, in chapter nine, commencing on page 365 of the Code, for directions as to a fit mode of procedure, under the act of 1854, for the purpose of making the settlement effectual, and binding upon all parties in interest; and, *a fortiori*, is such a course proper, inasmuch as the act of 1854, is entirely silent, as to how the settlement shall be made, how notice shall be given, and who may be parties to the proceeding.

It appears to me that the Probate Judge, in settling under the act of 1854, should proceed, as near as may be, in accordance with chapter nine, page 365 of the Code. Under this chapter (§ 1880,) “any person interested may attend and contest” such settlement. Independently of this provision, the securities would have a right to appear and contest at such settlement, inasmuch as they are ultimately responsible.—7 Ala. R. 617. The Court, therefore, has jurisdiction of questions made by the securities upon such settlement. Having jurisdiction to hear and determine—to make binding decrees for or against the securities—it follows, as a natural consequence, that if the securities are required to come in and contest the account rendered or stated, on a day certain, and before final decree thereon, by citation, personally served on the securities, they would be bound by the decree rendered upon the final hearing.

In 24 Ala. R. 518, in a case arising under the act of 1854, the Supreme Court say, “The settlement made by the administrator of Jennings was not binding on the securities of the latter, for the reason that it was, as to them, *res inter alios acta*. They were neither parties nor privies to it, and it was not a proceeding *in rem*,” thereby clearly indicating that they would have been bound by it if they had been made parties by the proper notice and citation. That they would be proper parties, because interested, sufficiently appears from 7 Ala. 617.

This mode of settlement, under the act of 1854, is the only one whereby it can be made as “completely” as if it had been made by the principal in his lifetime. If the securities are not notified and made parties, it is plain, from the language above quoted from 24 Ala. 518, that they are not liable to respond

with this Court of the said administration of said E. F., deceased upon the estate of the said C. D., deceased ; and, to that end, that the said G. H. may be cited to be and appear in this Court on or before a day to be named and appointed by your Honor, to file such an account, statements, vouchers and other evidences as may be required to make such a settlement as fully and completely as the said E. F., deceased, might or could have done while living.

Your petitioner further prays your Honor, when such account shall have been filed, and the day set and appointed to make settlement of the same, that an additional order

to it, nor bound by it in any tribunal whatsoever. So far as the sureties are concerned, the settlement which has been made in the Probate Court is mere waste paper. It is not as "completely" made as if by the living principal, because, if made by him, its operation would be to bind his sureties—one of the rights established by it, would be to have ultimate satisfaction of it out of the sureties. It is not, then, complete, within the meaning of the statute, because it lacks a valuable ingredient, which is essential to those claiming rights growing out of the enforcement of the decree.

Again, the Probate Court is the forum where the liabilities of principal and surety can be better litigated and settled than in any other. The Judge must have been, generally, familiar with the progress of the administration. His records show what money and effects originally went into the hands of the representative, how much he may have collected thereafter, what property may have been sold, the price it brought, how much of the price has been paid, the persons who are interested in the estate, and a thousand other particulars, not likely to be within the knowledge of any other Judge, which it would be useless and tedious to enumerate. It is a self-evident proposition, that no other tribunal possesses anything like the means, for stating such an account accurately, as those within the reach of an experienced Probate Judge.

And still, again : the proviso to the third section of the act is, that such administrator of the deceased administrator, "shall only be liable for the assets that may come into his hands." After the full and complete settlement, therefore, has been gone into, as provided for in the first section of the act, comprehending moneys received and paid out, and showing balances of what ought to be on hand, showing the property which came into the possession of the deceased, and which ought still to be on hand, &c., &c., after all this, the account and settlement would bind nobody but the administrator of the deceased representative, and him, only so far as it could be shown that assets came into his hands—it would bind nobody, unless the Court, at the instance of the persons interested, or of its own motion, could make the securities parties by citing them in, to contest the settlement. The bare statement of such a result of this full and complete settlement, (the sureties not being bound unless they are parties, voluntarily or by compulsion,) is sufficient to show that the Court has the power to make them parties, in order to bind them by the settlement. Any other construction would be, to defeat the intention of the act, and to render its provisions almost useless.

may be entered requiring the said I. J. and L. M., as sureties as aforesaid, to contest at such settlement, if they think proper, and to show cause, if any they can, against such decree as may then be rendered in the premises. And as in duty bound, &c. A. B.

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[ No. 154. ]

ORDER setting day to hear PETITION for a SETTLEMENT of ACCOUNTS  
under Acts 1853-54, p. 24.

<i>C. D., deceased, Estate of, }</i> <i>As to settlement by successor. }</i>	18
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This day came A. B., the administrator *de bonis non*, in this Court, of said estate, and filed his petition in writing, and under oath, praying, among other relief asked, that G. H., the executor of the will of E. F., deceased, duly qualified in the Probate Court of Wilcox county, may be compelled to make a settlement of the former administration, had under authority of this Court, in and upon the estate of the said C. D., deceased, by the said E. F., since deceased, the said E. F. having died without having previously made such settlement. It is, therefore, ordered, by the Court, that said G. H., in his capacity of such executor, be cited and required, on, or before the — day of —, 18—, to file in this Court, an account, together with such statements, vouchers and other evidences as may be required, to make such a settlement as fully and completely as the said E. F., deceased, might or could have done while living.\*

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\* *The citation would read, "to cite G. H. as the executor of the last will and testament of E. F., deceased," and would be "to file an account, together with the proper evidences, requisite to make a settlement, as fully and completely as the said E. F. might or could have done while living, of the former administration, in said Court, of the said E. F., now deceased, upon the estate of C. D., deceased, the said E. F. having died without making a settlement of his said administration."*

No time is specified for notice, but the citation should be served for such time as the Court deems reasonable, before any action is had for a failure to answer.

[ No. 155. ]

## ANSWER of the ADMINISTRATOR of an Administrator to a requisition for SETTLEMENT.

*State of Alabama,* }  
 ——— *County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate for the County of Mobile :

G. H. the executor of the last will and testament of E. F., deceased, to the citation heretofore served on him, requiring him as such executor, to file the proper accounts and evidences, to make a settlement of the former administration of said E. F. upon the estate of C. D., deceased, the said E. F., since deceased, having, in his lifetime, administered upon the estate of said C. D., deceased, in said Court, and having died without making a final settlement, now makes answer to your Honor : That the account\* hereto annexed, showing the sum of five thousand and two hundred dollars to have been received, and the sum of fourteen hundred and eighty-six dollars to have been expended by the said E. F. as such administrator, together with the vouchers in support of said account, which are herewith filed, numbering from one to forty-three, constitute the only accounts of money received and disbursed by the said E. F., as such administrator, which it is in the power of the said G. H. to render to your Honor in the premises, after the utmost diligence.

This respondent further answering, says, that the list of personalty, also, hereto attached, constitute all the assets, other than said balance in money, belonging to the estate of said C. D., deceased, which have come into the hands of respondent.

Respondent further states, however, that there are other items of personal property, returned by the said former ad-

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\* For specific directions as to the manner of making out the account, consult the ordinary accounts, to be found hereafter in these forms, for final settlement by an administrator.

ministrator in his inventory of the estate of the said C. D., deceased, as to which this respondent can render no account—the value of said property being unknown to respondent, and respondent never having had possession thereof, and not now having any knowledge or information respecting it. In verification of this statement, respondent prays leave to refer to said inventory.

And now, having answered to the best of his knowledge, all things which it is required that he shall make answer unto under said citation, respondent prays that a day may be set for the purpose of making such settlement, and that the proper and legal notice may be given, and such other course pursued by your Honor as may be necessary to have such settlement made in all things according to law. And as in duty bound, &c.,

G. H.

Subscribed and sworn to, &c.

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[ No. 156. ]

ORDER setting day to SETTLE the ACCOUNTS of an ADMINISTRATOR of an ADMINISTRATOR—the same having been filed for that purpose.

*C. D., deceased, Estate of, }*  
*Day for settlement. }*

18

In obedience to citation duly issued and served under an order of Court in the premises, this day comes G. H., as the executor of the will of E. F., deceased, and files, under oath, statements, accounts, vouchers and other evidences, together with a list of all the assets of the estate of said C. D. which have come into the hands of the said G. H. for the purpose of making a final settlement of the former administration of the said E. F., deceased, in his lifetime, upon the estate of the said C. D., deceased. And the Court having examined and found said account apparently correct, the same is now reported for settlement. And it appearing to the Court, from an inspection of the records in this estate,



and from the petition of A. B., the administrator *de bonis non* of the estate of said C. D., deceased, that I. J. and L. M. were the securities of the said E. F., since deceased, in his bond in this Court, as such former administrator, and have an interest in such settlement: It is ordered, that the — day of —, 18—, be set to audit and examine said account and to restate the same, if necessary, and that notice of the said time so set, and of the nature of such proceeding, be given by publication, for three successive weeks, in the —, a newspaper published in said county, calling upon all persons interested, and who may think proper, to appear and contest said settlement. It is further ordered, that said I. J. and L. M., as such securities as aforesaid, be required by citation, to be personally served on each of them, at least ten days before a final hearing shall be had, to appear on said day, or on any other day to which the same may be regularly continued, to show cause, if any they can, against such decree as may then be rendered in the premises, and finally establishing said account.\*

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[ No. 157. ]

FORM of PUBLICATION in compliance with the next preceding Order.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*C. D., deceased,* } E. F., the former administrator of said  
*Estate of.* } estate, in said Court, having died without making any settlement of his said administration, this day came G. H., as the executor of the last will of said E. F., deceased, and filed a statement, accounts, vouchers and evidences for the purpose of making a settlement of the admin-

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\* The appointment of a guardian *ad litem* may be made in this order, or be postponed until publication has been made for a week or two. The latter is the better practice. For form of appointment see Nos. 11 and 104.

The account should be stated as required in Code § 1878, and the proceeding should then be conducted according to the provisions of the Code § 1879, et seq.

istration of the said E. F., deceased, upon the estate of said C. D., deceased; and the Court having examined, stated and reported the same for a settlement: It is ordered, that the — day of —, 18—, be set as a day on which said account can be examined, audited, and, if found necessary, restated, at which time, and for such purpose, all persons in interest can appear and contest said account and settlement, and have such other relief as the law permits in such cases.

EDWIN RUST, Judge.

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[ No. 158. ]

FINAL DECREE upon ACCOUNT against the DECEASED ADMINISTRATOR.

*C. D., deceased, Estate of,* }  
*Final Decree, &c.* }

18

E. F., now deceased, the former administrator, in this Court, of said estate, having departed this life without having settled his said administration, and G. H., as the executor of the last will and testament of the said E. F., deceased, having heretofore filed statements, accounts, &c., for the purpose of making such settlement, and said statements, accounts, &c., having been heretofore duly examined, stated and reported, by the Court, for such settlement, and the hearing thereof having been regularly set down for this day, now comes A. B., the present administrator *de bonis non* of said estate, and moves the Court to proceed with such hearing, and for a decree, allowing and passing said account as heretofore stated, and that the Court will hear proof, and will decree thereon, as to the liability of the said E. F., deceased as such administrator as aforesaid, for the slave boy Sam, mentioned in the inventory of the estate of said C. D., deceased, filed in this Court by said E. F., as such administrator. And it being now shown to the Court, that said I. J. and L. M., have been duly served with citations, and that notice has, also, been given by publication—all done and

executed in conformity to, and as directed in and by the former order of the Court in the premises made and entered on the — day of —, 18—. (*If the sureties appear personally, or by attorney, state the fact distinctly—if there are minors proceed as follows, viz:* and G. B., who was heretofore duly appointed guardian *ad litem*, to represent and protect the interests of M. D. and A. D., who are all of the minor heirs of said C. D., deceased, in the matter of said settlement, now appearing in open Court, and consenting to act, and contesting said settlement,) the Court proceeds to the consideration of said account and settlement, and the evidence submitted in the premises. Whereupon, it is shown by due proof, and to the satisfaction of the Court, that the said E. F., had, before and at the time of his death, received, of the assets of the estate of the said C. D., deceased, and in his said capacity of administrator thereof, the sum of twenty-eight hundred and eighty-eight dollars and eighty-two cents; that the said E. F. justly expended for and on account of the said estate of said C. D., deceased, during his said administration thereof, the sum of six hundred and thirty-nine dollars and twenty cents, from which it is made apparent that said E. F., as such administrator, was justly indebted at the time of his death, to said estate of C. D., deceased, in the sum of twenty-two hundred and forty-nine dollars and sixty-three cents in cash: It is, therefore, ordered, adjudged and decreed, that said account of moneys be, and the same is hereby passed and established, as above stated.

And it further appearing to the Court, from the evidence, that the said G. H., as executor as aforesaid, has money in his hands, amounting to the sum of two thousand dollars, which was received by the said E. F., deceased, in his lifetime, as such administrator: It is ordered, adjudged and decreed, that said G. H., executor as aforesaid, do pay to the said A. B., in his said capacity of administrator *de bonis non*, the

said sum of two thousand dollars, or that execution issue for the same within ten days from this day.

And the Court having heard and considered the evidence respecting the slave Sam, and being satisfied thereby, that said slave belonged to the estate of said C. D., deceased; that as such the said slave came into the possession of said E. F., deceased, as such administrator; and the said slave not being now produced, and his non-production not being in any way accounted for; it is considered by the Court that the said E. F., now deceased, as such administrator, was, in his lifetime, and at the time of his death, liable for the said slave. And, it appearing from the premises, that the said E. F., deceased, as such administrator, in addition to said slave was liable for the sum of twenty-two hundred and forty-nine dollars and sixty-three cents: It is found and adjudged by the Court, that said E. F., deceased, in his lifetime, and at the time of his death, as such administrator, was justly indebted to the estate of said C. D., deceased, in the sum of twenty-two hundred and forty-nine dollars and sixty-three cents, including the said sum of two thousand dollars, above ordered to be paid by said G. H., the whole amount of which still remains due and unpaid; and that he was, as such administrator, and at the time of his death, liable for the said slave Sam, and that such liability has never been in any way discharged, but still remains in full force.

It is further ordered, that the petition of the said A. B., in this matter filed, and all other papers and writings relating to this proceeding, be recorded for future reference, if necessary.

## [ No. 159. ]

ORDER by the COURT that REPRESENTATIVE be CITED to file his  
ACCOUNTS, &c.—Code § 1801.\*

*Richard Rich, deceased, Estate of, } 18*  
*Order to make settlement.*

It is ordered by the Court, that citation issue to John Jones, as administrator of said estate, requiring him to appear in this Court on or before the — day of —, 18—, to file his accounts, vouchers, evidences and statements for a settlement of his said administration.

## [ No. 160. ]

ORDER REVOKING LETTERS to REPRESENTATIVE for failure to file his  
ACCOUNTS, &c.—Code § 1696.†

*Richard Rich, deceased, Estate of, } 18*  
*Removal of Administrator.*

It appearing to the satisfaction of the Court, from an inspection of the records and papers on file, in this estate, that John Jones, the administrator thereof, has been required by an order of Court to that effect, and by citation issued in pursuance of said order, and which was duly served on him, a reasonable time prior to this day, to file his accounts, vouchers, &c., on, or before this day, for the purpose of making a settlement of his said administration; and the said Jones having neglected and disregarded said order and citation, and utterly failed to file any account, or to take any proceedings for the purpose of such settlement, or to show any cause for such neglect and failure: It is ordered,

\* Where the order is made upon the petition of any one interested, and not by the Court upon its own motion, the recital would be: "A. B., one of the heirs of the deceased, having this day filed his petition in writing and under oath, praying that John Jones, the administrator of said estate, may be required to make a settlement of his accounts with said estate: It is ordered by the Court, &c., as set forth in the above form.

† This form will answer where a guardian fails to settle according to law.—Code § 2030.

adjudged and decreed, that the said Jones be, and he is hereby removed from any further administration in and upon the affairs of said estate, and that his letters of administration, heretofore granted to him, upon said estate, be, and the same are hereby annulled and revoked.\*

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[ No. 161. ]

ORDER for an ATTACHMENT against PARTY failing to file ACCOUNTS as required.—Code § 1806, § 671.

*Richard Rich, deceased, Estate of, } 18*  
*Order to show cause, &c. }*

Citation having been duly served on John Jones, the administrator of said estate, in accordance with the terms of an order of Court made and entered in this estate on the — day of —, 18—, requiring said administrator to appear in this Court on or before the — day of —, 18—, to file his accounts, vouchers, evidences and statements for a settlement of his accounts as such administrator; and the said administrator not having complied with said order and citation, but being now in default and in contempt as to the same: It is ordered and adjudged, that process of attachment, returnable by the — day of —, 18—, be issued against the person of said administrator, so that he may be brought before this Court by the day last aforesaid, to show cause, if any he has, why he should not file said account, or be proceeded against for said contempt, and be otherwise dealt with, according to law in the premises.

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\* If an account is absolutely required, so that a removal and revocation will not answer the purpose, then proceed compulsorily, as indicated in the following form.

The succeeding forms will do, also, where compulsion is necessary against a guardian who fails to settle.

[ No. 162. ]

PROCESS of ATTACHMENT against an ADMINISTRATOR for failure to  
file ACCOUNTS as ordered.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To any Sheriff of the State of Alabama, Greeting :

John Jones, the administrator, in said Court, of the estate of Richard Rich, deceased, having been heretofore cited by process of citation, issued in pursuance of an order of said Court, which was duly served on him, and by which order and citation, said Jones was required to be and appear in said Court on or before the — day of —, 18—, to file his accounts, vouchers, evidences and statement, as such administrator, for the purpose of making a settlement of his said administration, and said Jones having totally disregarded said order, and the requirement of said citation :

You are, therefore, hereby commanded, in accordance with the terms of an order of Court, this day entered in said estate, to that effect, to attach and take the body of the said Jones, so that you have him before said Court, on or before the — day of —, 18—, to show cause, if any he has, why he should not file said account, or be proceeded against for said contempt, and be otherwise dealt with, according to law. And have you then there this writ, with your due return thereon as to how you have executed the same.

Witness, Edwin Rust, Judge of said Court, at office, in the City of Mobile, this the — day of —, 18—.

## - [ No. 163. ]

ORDER SETTING DAY to EXAMINE ACCOUNT for PARTIAL SETTLEMENT  
of ADMINISTRATION.\*

*Richard Rich, deceased, Estate of, }  
Setting day to settle. } 18*

This day came John Jones, administrator of said estate, and filed his statement, account, vouchers and evidences for a partial settlement of said administration; and the Court having examined said accounts, &c., and found them to be apparently correct, the same are now reported for such settlement: It is, therefore, ordered, that the — day of —, 18—, be appointed a day to make such partial settlement, and that notice of the time and nature of such settlement be given by publication,† to be made for three successive weeks, in the ———, a newspaper published in this county. It is further ordered, that G. B., be, and he is hereby appointed to act as guardian *ad litem* for and to protect the interests of ——— and ———, the minor heirs (*or, legatees, or, as the case may be*) of said deceased, in all matters pertaining to this settlement; and that said guardian *ad litem* have notice of his said appointment.

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\* For precedents for the form of the accounts, for the statement of the property, of the heirs, of the amounts paid to each heir, and other matters relating to an annual settlement, see the forms used upon the final settlement.

## † FORM FOR PUBLICATION :

State of Alabama, }  
Mobile County. } Probate Court.

18

Richard Rich, dec'd. } This day came John Jones, administrator of the estate  
Estate of. } of said deceased, and filed his account, vouchers, evidences and statement for a partial settlement of the same: It is ordered, that the — day of —, 18—, be appointed a day for making such settlement, at which time all parties in interest can appear and contest the same, if they think proper.  
EDWIN RUST, Judge.

If no paper is published in the county, see order, as to notice, upon final settlement.



[ No. 164. ]

## DECREE PASSING an ANNUAL ACCOUNT.

*Richard Rich, deceased, Estate of. }*  
*Partial settlement.*

18

This being the day set to hear and pass upon the account heretofore filed by John Jones, as the administrator of said estate, for a partial settlement of his administration thereof, now comes the said Jones and moves the Court to proceed with such settlement, and that said account be passed and allowed. And it appearing to the Court, from proper evidence, that due notice of the time and nature of this settlement has been given by publication for three successive weeks in the ———, a newspaper published in this county; and G. B., who was heretofore appointed to act as guardian *ad litem* for, and to protect the interests of ——— and ———, the minor heirs (*or, as the case may be,*) of said decedent, in the pending settlement, now appearing in open Court, consenting to act, and contesting such settlement, the Court proceeds to examine said account and to hear the proof in relation thereto: Whereupon it is found that said administrator has received, in cash, of the assets of said estate, the sum of one thousand dollars; that he has justly expended in and about the costs and charges attendant upon said administration, and in paying the just debts of said deceased, the sum of five hundred dollars, leaving in his hands the sum of five hundred dollars: It is therefore ordered, adjudged and decreed by the Court, that said account be, and the same is hereby in all things passed and allowed, as above stated. And the said administrator having filed with the account above stated, and, at the same time, his accounts against the heirs and distributees of the estate of said deceased, together with his vouchers and evidences in support of the same: Now, upon an examination of the said accounts by the Court, it appears that the said administrator has paid the following sums, to the respective parties named, the same being on

account of their respective distributive shares of the estate of said deceased, to wit : To James Goodfellow, the guardian in this Court, of the person and estate of said ———, the sum of one hundred and twenty-five dollars, and to said ———, the sum of one hundred dollars. It is ordered, that the consideration and allowance of the said payments, as made by the said administrator, be continued and postponed until a future time, or, until the final settlement and distribution of said estate. It is further ordered, that said accounts, vouchers, evidences and statements, together with all other papers on file pertaining to this settlement and proceedings be recorded. It is further ordered, that said administrator pay the cost and expenses of this settlement to be allowed to him against said estate.

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[ No. 165. ]

PETITION of LEGATEE that he may have his LEGACY.—Code § 1772, et seq.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate of said County :

The petition of George Foy, respectfully represents unto your Honor, that he is a legatee mentioned in the will of Absalom Foy, deceased ; that letters testamentary upon said will were granted and issued to Nimrod Foy, in and by said Court, more than eighteen months since.

Your petitioner further states, that as such legatee, he is entitled to one negro man, named Ben, who is described in said will, and enumerated, with the other property of the deceased, in the inventory of said estate, now on file in this Court—(or, he is entitled to one thousand dollars in money.)

Your petitioner alleges further, that there is a sufficiency

of assets in the hands of said executor to enable him to make delivery (*or*, payment) to petitioner of his said legacy, after discharging the debts of, charges on, and other legacies entitled to priority, if any such there be, from said estate.

Notwithstanding all which, and the just demand of your petitioner that said executor should make delivery (*or*, payment) to him of his said legacy, yet said executor refuses to comply with the said terms of said will. Wherefore, your petitioner prays your Honor, that said executor may be duly cited by your Honor, and that he may be compelled to deliver said slave (*or*, pay said money) to petitioner in accordance with the terms of said will, and of the law in such cases made. And as in duty bound, &c.

GEO. FOY.

Subscribed and sworn to, &c.

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[ No. 166. ]

PETITION of HEIR that he may receive DISTRIBUTION of a portion of his INHERITANCE.—Code § 1778, et seq.

*State of Alabama,* }  
*Mobile County.* } In the Probate Court.

To the Hon. Edwin Rust, Judge of said Court :

Your petitioner, George Foy, respectfully represents unto your Honor, that he is an heir of the estate of Absalom Foy, deceased ; and that Nimrod Foy became the administrator of said estate, in this Court, more than eighteen months since.

Petitioner further states, that, as such heir, he is entitled to one third part or share of said estate, whenever the same shall be divided ; and that the assets of said deceased are more than sufficient to pay the debts of said estate.

Your petitioner states, that he has demanded, as he believes he had a right to do, from said administrator a partial distribution of said estate, and that such just demand has been refused by said administrator.

In consideration of all which, your petitioner prays your Honor, to cite said administrator on a day certain, to be appointed by your Honor, to show cause, if any he has, why he should not be compelled to make distribution of the whole or a part of said estate. And as in duty bound, &c.

GEO. FOY.

Subscribed and sworn to, &c.

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[ No. 167. ]

ORDER setting day to hear PETITION of LEGATEE or HEIR, requiring the REPRESENTATIVE to show cause against delivery of LEGACY, or DISTRIBUTION of any part of the ESTATE.

*Absalom Foy, deceased, Estate of, }*  
*As to legacy (or, distribution.) }* 18

This day came George Foy, a legatee mentioned in the will (*or*, an heir) of said decedent, and filed his application in writing and under oath, praying that his legacy under said will may be delivered (*or*, paid) to him: (*or*, that his share in said estate, or a portion thereof, and which, in said petition, is alleged to be one-third part thereof, may be distributed to him:) It is ordered, that the — day of —, 18—, be appointed a day to hear said application, and that citation\* issue, to be personally served on Nimrod Foy, the executor of the will (*or*, administrator of the estate) of said deceased, at least ten days before said application, shall be heard, notifying him of the grounds of said application, and of the day set to hear the same.

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\* The command, in the citation, would be to summon the representative in his official capacity; requiring him to appear on the day set, to answer the application filed in this Court by George Foy, as a legatee mentioned in the will (*or*, as an heir) of said decedent, praying that his legacy under said will may be delivered (*or*, paid) to him: (*or*, that his share in said estate, or a portion thereof, may be distributed to him) upon the ground that more than eighteen months have elapsed since the commencement of administration upon the affairs of said estate; and because said legacy can be satisfied (*or*, and because that a distribution can now be made) without detriment to any person whomsoever, and without infringing upon any right, claim or interest of any name or nature.

[ No. 168. ]

ORDER granting PETITION of LEGATEE that his LEGACY be SATISFIED.

*Absalom Foy, deceased, Estate of, } 18*  
*As to Legacy. }*

This being the day appointed by an order of the Judge of this Court, made and entered, in this estate, on the — day of —, 18—, for hearing the application of George Foy, a legatee named in the will of said deceased, asking for an order and decree of Court, that his legacy be delivered (*or*, paid) to him, now comes the said George Foy, by I. F., his attorney, and moves the Court to proceed with such hearing. And, it being shown that the proper notice and citation have been given to Nimrod Foy, as the executor of the said will of said testator, in all respects strictly according to the terms and requirements of said former order in the premises, the Court proceeds to hear and determine the matter of said application : Whereupon, it being shown to the satisfaction of the Court, by due proof, that letters testamentary upon said will, were granted and issued by this Court, to said Nimrod Foy, more than eighteen months since ; that by the terms of said will, the slave Ben is bequeathed to the said George, (*or*, the said George is entitled to the sum of one thousand dollars ;) that after the delivery (*or*, payment) of such legacy, there will remain a sufficiency of assets to pay all the debts which have been presented, charges and other legacies entitled to priority, (*or*, and that there are no other legacies entitled to priority) and that said slave is of the value of one thousand dollars, and not probably more : It is ordered, adjudged and decreed, that the said application be, and the same is hereby granted, and the said Nimrod, as such executor, is hereby directed to deliver to the said George Foy, legatee as aforesaid, the said slave Ben, (*or*, to pay to the said George Foy, legatee, as aforesaid, the said sum of one thousand dollars;) if the said George shall give bond and security as required by section

1776, of the Code of Alabama—that being the legacy to which he is entitled by the terms of said will.

The foregoing order is so much like that which would be required to be made upon an application for distribution by an heir, that it does not seem necessary to insert any other form on the subject.

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[ No. 169. ]

REFUNDING BOND required under the next preceding ORDER.—Code § 1776.

*State of Alabama,* }  
*Mobile County.* }

Know all men, that we, George Foy, of the county of Marengo, Willoughby Foy, of the county of Madison and Sansom Sharpe, of the county of Pike, all of this State, are held and firmly bound unto Nimrod Foy, executor of the last will and testament of Absalom Foy, deceased, in the sum of two thousand dollars, for the payment of which we bind ourselves, our, and each of our heirs, jointly and severally, firmly, by these presents. Sealed with our seals, and dated the — day of —, 18—.

Whereas, the said testator, in and by his said last will, did give and bequeath unto the above bound George Foy, one thousand dollars, to be paid him in money (*or*, the slave boy Ben, mentioned in the inventory and appraisement of the estate of said testator, which are on file, and which boy has been duly valued by the Court of Probate of Mobile county, at the sum of one thousand dollars, as will fully appear by reference to the decree of said Court, made and entered in the premises on the — day of —, 18—.) And, whereas, the said executor has this day paid the said George the said sum of one thousand dollars: (*or*, delivered to the said George the said slave Ben:) Now, therefore, the condition of this obligation is such, that if the said George shall pay and refund the said sum of one thousand

dollars (*or*, shall duly return the said slave Ben, or pay the value thereof,) to the said Nimrod, with interest on such amount (*or*, value) from this day, should the assets of said estate prove insufficient to discharge the other debts presented, and charges, then this obligation to be void, else to remain in full force and effect.

Taken and approved this the } GEORGE FOY, [SEAL.]  
     — day of —, 18—. } WIL. FOY, [SEAL.]  
                     EDWIN RUST, Judge. } SANSOM SHARPE, [SEAL.]

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[ NO. 170. ]

PETITION to SELL SLAVES for DISTRIBUTION.—See Acts 1853-'54,  
     page 45; Code § 1743, et seq.

*State of Alabama,* } Probate Court of said County.  
     *Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court:

The petition of A. B., the administrator of the estate (*or*, executor of the last will and testament) of C. D., deceased, respectfully shows unto your Honor, that the personal property of said estate now remaining, and which is subject to distribution to the widow and among the heirs, (*or*, legatees, *if the property is distributed under a will*) consists of three slaves, viz: boy Jeff, about forty-five years of age, woman Sally, about forty, and boy Bill, about twenty-one years of age, which said negroes cannot be equitably divided between those entitled, inasmuch as there are but three negroes while there are four persons entitled to share in the said property (*or*, inasmuch as said negroes are so unequal in value, *or any other fact, showing that an equitable division cannot be made without a sale: and if any will has been proven, the applicant must further state as follows, viz:* and petitioner further states, that no power is conferred in the will of said testator for the sale of said property for the purpose of distribution.)

Your petitioner further states, that the persons entitled to share in the division of said property are, E. F., the widow, and G. H., I. J. and K. L., the children of said decedent—said children all being under the age of fourteen years, and resident in this county with their mother, the said E. F.

Your petitioner, therefore, prays your Honor, that a day may be set for hearing the matter hereinbefore set forth; that such notice as is required by law may be given, and that an order may be duly granted and entered in the premises, authorizing a sale of said property, in order that the same may be duly distributed among those entitled, as aforesaid. And as in duty bound, &c.

A. B.

Subscribed and sworn to, &c.

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[ No. 171. ]

ORDER SETTING DAY to hear PETITION to sell SLAVES for DISTRIBUTION.\*

<i>C. D., deceased, Estate of,</i>	}	18
<i>As to sale of slaves for distribution.</i>		

This day came A. B., the administrator in this Court of the said estate, (*or*, executor of the last will and testament of said decedent,) and filed his application in writing, and under oath, praying the sale of the slaves Jeff, Sally and Bill for the purpose of distribution, and upon the ground (*if there is a will*, that the will gives no power of sale for such purpose, and) that no equitable distribution thereof can be made without such sale being had: It is, therefore, ordered, that the — day of —, 18—, be set as a day for hearing such petition, and that due notice of such application, and of the said day set for hearing the same, be given,

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\* It is hardly necessary to insert a precedent for a final order in this proceeding, as Form No. 99, page 112, with slight alterations, will answer the purpose.



by publication thereof, for three successive weeks in the ———, a newspaper published in this county, (*or*, be given by posting such notice at the Court house door, three weeks before such application is heard, there being no paper published in this county.)

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[ No. 172. ]

Form of NOTICE to be PUBLISHED.

*State of Alabama,* } Probate Court. 18  
*Mobile County.* }

*C. D., deceased,* } This day came A. B., administrator of  
*Estate of.* } said estate, (*or*, executor of the last will and testament of said decedent,) and duly filed his application for leave to sell the slaves Jeff, Sally and Bill, the property of said estate, for the purpose of distribution among those entitled: It is ordered, that the — day of —, 18—, be set as a day for hearing said application, at which time all parties interested can appear and contest the same, if they think proper.

E. RUST, Judge.

## [ No. 173. ]

PETITION to SELL PERSONAL property, other than SLAVES for DISTRIBUTION.—Acts 1853-'4, p. 45-'6, No. 44; Code § 1743, et seq.\*

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Probate Court  
 in and for said County :

The petition of A. B., the administrator of the estate (*or*, the executor of the will) of C. D., deceased, respectfully shows unto the Honor, that eighteen months have elapsed since he qualified in said Court as such administrator; (*or*, executor;) and that his said administration is now (*or*, soon will be, *as the case may be*) in a proper condition for a final settlement, when it will be proper that said estate should be distributed, as the law directs in such case, (*or, if there is a will*, as the said testator has required by the terms of his will.)

Your petitioner further states, that E. D., a minor over the age of fourteen years and who resides in this county; G. D., who is under the age of fourteen years and who resides with and is in the custody of his mother, J. D., in this county, and the said J. D., who is of full age and who is the widow of the deceased, are the only persons interested (Code § 1745,) in said estate, or the property hereinafter mentioned.

Your petitioner further shows, that said estate is possessed of, (*here describe the personal property required to be sold, other than slaves*) which it is necessary to have sold in order to make distribution thereof, as aforesaid.

In consideration of the premises, and of the proof to be adduced, by petitioner, in support thereof, at such time and in such manner as said Court may require, (*if there*

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\* Slaves, and other personal property are not included in the same petition, for the reason, that the mode of proceeding to sell the two species of personalty differs in each case, as will be seen by reference to the Code § 1744.

The proceedings under petitions No. 92 and 96, of these forms, are so identical with those under this act, that it is not deemed necessary to give any other form in this connection than this petition. See the orders and decrees under the petitions above indicated.

*is a will proceed here as follows, viz :* and for as much as no power for the sale of said property for the purpose of distribution is either denied or conferred by said will,) your petitioner prays that such orders and decrees may be made, and that such proceedings may be had as may be requisite and proper to have said property sold, and said estate finally disposed of, in manner aforesaid. And as in duty bound,  
&c. A. B.

Subscribed and sworn to, &c.

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[ No. 174. ]

STATEMENT of REPRESENTATIVE for FINAL SETTLEMENT of his  
ACCOUNTS, and for DISTRIBUTION.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Probate Court in and  
for said County and State :

The petition of John Jones, respectfully shows unto your Honor, that more than eighteen months have elapsed since he was appointed and qualified, in this Court, as administrator of the estate (*or*, as executor of the last will and testament) of Richard Rich, deceased, during all which time, he has diligently, and to the best of his abilities, administered in and upon the affairs of said estate.

Your petitioner further states, (*see Code § 1734*,) that within one month after said letters were granted to him, he gave notice of his said appointment, by publication thereof, for six successive weeks (*Code § 1735*) in the ———, a newspaper published in said county, (*or*, published in the county of ———, being the paper published nearest to the Court house of this county, there being no paper published in this county,) a copy of which said notice, as published, is herewith exhibited and filed, together with the affidavit of A. B., the publisher (*or*, one of the publishers) of said paper,

showing when said publication was first made, and the length of time it was continued.

Your petitioner further shows, unto your Honor, that, in his opinion, said estate no longer requires the continuance of an administration, wherefore, he now herewith files his accounts, for a final settlement thereof, showing all the amounts with which he is justly chargeable, and the payments which he is entitled to have allowed to him, together with his vouchers, each duly numbered, and all other written evidences which he has, in support of said account.

Your petitioner, also, herewith files, for the purposes of such final settlement, and that your Honor may be enabled to make the proper orders and decrees for a due distribution of the residue of said estate, three schedules, each respectively marked, A., B. and C., and prays that the same may be referred to and taken as part of this, his return : The first, being a statement of the personalty belonging to said estate, other than money, and which is now subject to distribution, and showing such as is increase, or not contained in the inventory on file : the second, being an account showing the several amounts paid to, and for the heirs and distributees (*or, and legatees, if there is a will,*) the dates when, and the amounts paid to each—the third, being an account showing the amount of funds used by the administrator, the time and profit of such use, and charging himself with such profit, when over legal interest, and with interest when the profit has been less.\*

Your petitioner further states, that Mrs. Olivia Rich, who resides in this county, is the widow of said decedent ; and that the heirs (and legatees, *if there is a will*) of the deceased, are his five children, to wit : John and Thomas, both of whom are under the age of twenty-one years, and

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\* *If the administrator has not used the funds of the estate, then in lieu of what is here stated in the text, he should insert in place of the third schedule, the following statement, viz : Your petitioner further states, that he has not, at any time, during his said administration, (except as accounted for at his settlement made with this Court on the — day of —, 18—, if the fact is that he has used funds at a former time) used the funds of said estate, or any part thereof, for his own benefit, in any way whatever.*

resides in this county; Johnstone, who is of full age, and resides in the city of New York; Jimsey, who is of full age, and who resides with her mother, said Olivia, but who is supposed to be of an unsound mind; and Elizabeth, whose age and present residence is unknown, but who is the wife of Joseph Flox.

Your petitioner further states, that he is informed that no inquiry, in a legal form, has ever been made as to the true state of the mind or capacity of the said Jimsey; that no guardian has ever been appointed for the estate of said Thomas, and that the said Olivia has qualified, in this Court, as the guardian of the person and property of said John.

Your petitioner, therefore, prays your Honor, that a day may be set for making such final settlement; that notice of the same may be given and published as is required by law; that some suitable person may be appointed by the Court, at the proper time, to act as guardian *ad litem* for said minors, in this proceeding, and for the said Jimsey, if she fail to appear after being personally notified and cited; and that, after this statement, said schedules, and said accounts, vouchers and other written evidences have been duly audited, examined and considered, your Honor will be pleased to pass and allow said account, in such form as may then appear just and right, and then proceed to distribute said estate among those entitled, first deducting the amount of fees and cost due the officers of this Court, including this final proceeding, and any compensation which your Honor may be pleased to allow to the undersigned for his services.\* And as in duty bound, &c.

JOHN JONES.

Subscribed and sworn to, &c.

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\* If the representative claims for special and extraordinary services, he should be required to state what amount he claims extra, with a concise detail of the services rendered, and the grounds of the claim; and no such claim should ever be allowed, without it is so set forth, and clearly proved.

When collected.	FROM WHOM AND FOR WHAT.	Amount.
1854.		
May 14.	To this sum collected on account of judgment in Circuit Court vs. A. B.....	1,220 00
Aug. 10.	To this sum paid by C. D., surviving partner of the deceased, and on account of the interest of deceased in the late firm of A. B. & Co.....	3,230 21
" 14.	To this sum hire of boy Jack, at \$15 per month, paid by Wm. Sorle, for the months of May, June and July.....	45 00
Nov. 3.	To this sum note of Albert Primrose for.....	500 00
	Interest to date.....	67 00—
1855.	(Balance still due, and note on hand )	
July 11.	To this sum from proceeds of sale of lands heretofore reported, being 1-3, and the cash payment made on sale..	2,102 16
	(Balance due as shown in former report of sale.)	
	To this sum, interest—(See interest acc't herewith filed)	169 32
		<hr/>
		\$7,333 69

## [ No. 176. ]

SCHEDULE marked A. referred to in the annexed petition, showing all the PERSONALTY, other than money, now subject to DISTRIBUTION, viz :

Negro Jack, about 25 years old, appraised at....	\$1,200 00
“ Jim, “ 25 “ “ “ .....	1,200 00
“ Betsy, “ 40 “ “ “ .....	800 00
And Julia, “ 6 (her daughter,) “ .....	400 00
	<hr/> 1,200 00

Negro Phœbe, about 21 years old, appraised at..... 1,000 00

And her daughter, born since administration commenced—not appraised—supposed to be worth..... 200 00

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1,200 00

Also, the following negroes purchased, with the accumulations of the estate, under the orders of Court, directing such moneys to be invested—each of which said investments have been heretofore reported to Court, as the same were, from time to time, made, viz :

Joe, aged about 26 yrs, not aprs'd—suppos'd worth,	1,300 00
Bill, “ “ 24 “ “ “ “ “ .....	1,400 00
Siah, “ “ 27 “ “ “ “ “ .....	1,300 00

Also, judgment for \$2,106 17, recovered in the City Court of Mobile, on the — day of —, 18—, by deceased, in his lifetime, against A. B., upon which judgment the sum of \$1,220 has been paid to the undersigned, as will appear by his account on file and which was allowed by the decree of this Court on the — day of —, 18—, leaving a balance due, which has been secured by a note made by the said A. B., jointly with C. D. and E. F. as his sureties, for \$1,100 which is due with interest, to the order of the undersigned, on the — day of —, 18—, at the Bank of Mobile. Satisfaction of said judgment is not to be entered

until said note is paid. Said note was taken for said balance because it was believed by the undersigned that it was very doubtful if the judgment, or any part of it, could be made by execution, and because the security taken is thought to be entirely sufficient for the debt.

Also, a judgment in favor of the undersigned as such administrator, for \$682 25 in the Circuit Court of this county, against G. H., dated the — day of —, 18—, upon which, execution has been issued and returned no property, the costs for which are embraced in the annexed account of moneys. Whether said judgment can be made available, is doubtful, as the undersigned believes.

Also, an account for \$800, against I. J. Said account has not been sued because said I. J. is utterly insolvent, and because suit would necessarily have been unproductive and a useless expense. Also, notes (*describe them*) taken for the time payments on the sale of the land ordered to be sold for division by the decree of the — day of —, 18—, heretofore reported.

JOHN JONES.

Subscribed and sworn to, &c.



[ No. 177. ]

SCHEDULE B., referred to in the accompanying Petition, showing the several amounts paid to, and for each of the DISTRIBUTEES, and the date and character of each payment, viz :

## PAID MRS. O. RICH.

	No.	Vo.	Amount.
1857. Am't heretofore paid as appears from former settlem't.			\$100 00
Jan. 3. Cash.....	1		110 00
" 15. Alton Flasher's bill, groceries.....	2		32 25
Feb.12. Balthazar Toole, dry goods.....	4		51 08
Apr. 9. Amelia Flounce for millinery.....	5		88 10
Total.....			<u>\$381 43</u>

## AMOUNT PAID MRS. O. RICH, AS GUARDIAN, FOR ACCOUNT OF JOHN, VIZ :

	No.	Vo.	Amount.
1857. Am't heretofore paid as appears from former settlem't.			\$100 00
Jan. 8. For tuition to Mr. Allbrains.....	1		8 00
" 15. For 8 months board, lodging, &c., at \$10 per month..	2		80 00
Feb.20. For clothing, as per voucher.....	3		72 18
Mar. 8. For stationery and books, as per voucher.....	4		12 91
" 16. For 1 pair of boots.....	5		3 00
Total.....			<u>\$276 09</u>

## AMOUNT EXPENDED BY ADMINISTRATOR FOR THOMAS.

	No.	Vo.	Amount.
1857. As appears from former settlement.....			\$100 00
Jan. 1. Tuition to Joseph Allbrains.....	1		7 00
" 11. School books, as per voucher.....	2		10 00
Feb. 4. Necessary clothing, as per voucher.....	3		72 25
April 3. School books, &c. " " ".....	4		3 00
" " Board, lodging, &c. " " ".....	5		80 00
Total.....			<u>\$272 25</u>

## AMOUNT PAID BY ADMINISTRATOR FOR JIMSEY.

	No.	Vo.	Amount.
1857. As appears from former settlement.....			\$100 00
Jan.12. Board, lodging, &c., 8 months, at \$12.....	1		96 00
" 23. Necessary and proper clothing.....	2		81 16
Feb.19. Attendance upon her during sickness.....	3		17 00
" 26. Bill of medicines.....	4		11 04
Mar. 8. Dr. Blister, medical attendance.....	5		32 00
Total.....			<u>\$337 20</u>

Nothing has been expended for, or paid to said Johnstone or Elizabeth. Respectfully,

JOHN JONES.

Subscribed and sworn to, &amp;c.

## [ No. 178. ]

SCHEDULE C., showing the amount of FUNDS of the Estate used by the Administrator, &c.—Code § 1813.

1856.

July 8. Cash taken by administrator for private use and not returned to date, from the use of which, no profit has been made, say \$1,000, for 12 months..... 80 00

Aug. 7. Cash taken and used sixty days, say \$700, 9 32

“ 19. Cash taken and used 6 months, say \$2,000, 80 00

Due from the undersigned on this account....\$169 32

The undersigned states, that the foregoing is a full and accurate account of all the money of said estate, which he has at any time used or employed for his own benefit in any way ;\* and that the foregoing statement, as to any profit made from such use, is also strictly true.

JOHN JONES.

Subscribed and sworn to, &c.

## [ No. 179. ]

ORDER setting day to make a FINAL SETTLEMENT of the ACCOUNTS of the REPRESENTATIVE.—Code § 1805.

*Richard Rich, deceased, Estate of, } 18*  
*As to final settlement. }*

This day came John Jones, the administrator of said estate, and filed his statements, accounts, vouchers and evidences, for a final settlement of his said administration ; and said accounts having been examined by the Court, and found

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\* If in any prior accounting the administrator has made return of any moneys used, add here—except such sums as have been heretofore returned in a prior account, and which will appear by reference to the account, and the decree thereon rendered on the — day of —, 18—.

apparently correct, and being now reported for such settlement: It is ordered, that the matter of said settlement be set for a hearing on the — day of —, 18—, and that notice of the time and nature of such settlement be given by publication for three successive weeks in the —, a newspaper published in this county, (or, by posting such notice three weeks before said day of settlement, at the Court house, and at three other public places in this county, there being no newspaper published in this county.)

It is further ordered, that B. L., be, and he is hereby appointed guardian *ad litem* to represent — and —, and to protect their interests in such settlement, they being the only minors interested. It is further ordered, that said B. L. have notice of said appointment.

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[ No. 180. ]

Form of NOTICE to be PUBLISHED or POSTED.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*Richard Rich, deceased,* } This day came John Jones, the  
*Estate of,* } administrator of said estate, and  
 filed his statements, accounts, vouchers and evidences, for a final settlement of his said administration: It is ordered, that the — day of —, 18—, be appointed a day on which to make such settlement, at which time all persons interested can appear and contest the said settlement, if they think proper.

EDWIN RUST, Judge.

[ No. 181. ]

DECREE upon an ACCOUNT for FINAL SETTLEMENT.—Code § 1816, 1822.

<i>Richard Rich, deceased, Estate of,</i>	}	18
<i>Decree on final account.</i>		

This day having been set to hear and determine all matters as to the accounts heretofore filed by John Jones, as the administrator of said estate, for a final settlement of his said administration, now comes the said Jones and moves the Court that his said accounts may be passed and allowed, as the same has been by him filed, as aforesaid. And it appearing that due notice of the nature of, and of the time set to make such settlement has been given, in all respects according to law, and strictly in pursuance of the order of Court in said estate, made and entered on the — day of —, 18—, and B. L., who was heretofore duly appointed by the Court to act as guardian *ad litem*, to represent and protect the interests of John and Thomas Rich, the only minors concerned in this proceeding and settlement, now appearing and in open Court, consenting to act, and proceeding to contest said settlement, the Court proceeds to hear the matters pertaining to said accounts, and to consider the evidences submitted relating thereto: Whereupon, it is shown by sufficient proof, that said administrator has received, of the assets of said estate, the sum of seventy-three hundred and thirty-three dollars and sixty-nine cents in money, and that he has justly expended in and about the costs and charges necessary and incident to said administration, and in the payment of the just debts of said deceased, the sum of eighteen hundred and ninety-seven dollars, leaving a balance of fifty-four hundred and thirty-six dollars and sixty-nine cents subject to future charges and for distribution among those entitled. And said account appearing to be full and correct: It is considered and decreed by the Court, that said accounts be, and the same are hereby, in all things, passed and allowed as above stated.

*If the property of the estate has been turned into money for the purpose of division, and there is no property other than money to be divided, then proceed as follows, viz :* And it appearing to the Court, that after paying all costs and charges now due the officers of Court, including the expenses of this final settlement and distribution, there will remain, of the balance of money aforesaid, the sum of five thousand four hundred dollars, to be divided among those entitled ; and it further appearing that said decedent left him surviving, his widow, Mrs. Olivia Rich and five children, viz : John and Thomas Rich, the two minors aforesaid, and Johnstone and Jimsey Rich, and Elizabeth, who is now the wife of one Joseph Flox, all of whom are entitled to share the personal estate of the deceased in equal proportions, so that the said final balance of money must be divided into six equal parts ; and it being also shown to the Court, that the said Olivia is the guardian of the person and estate of the said John, duly appointed by, and qualified in this Court, it is considered by the Court that each of the said distributees are entitled to have the sum of nine hundred dollars paid to them respectively, that being one sixth part of the said sum of fifty-four hundred dollars, and the proper share to which said distributees are severally entitled. It is, therefore, adjudged and decreed, that the said Olivia, John, Thomas, Johnstone and Jimsey Rich, and the said Elizabeth Flox, do each have and recover of, and from the said John Jones, the said sum of nine hundred dollars, for which executions may issue, as follows, viz : in favor of the said Olivia for her share ; in favor of the said Olivia as such guardian, as aforesaid, for the use of the said John, (see Code § 2036,) for his share, in favor of the said Johnstone for his share, and in favor of the said Elizabeth for her share.

*If money has been paid to the distributees during the administration, the following would be the proper decretal order in place of the last above, viz :* But it is now made known,

and duly proven to the Court, by the said Jones, that pending his said administration, some of the said distributees were very young, and much of the time actually incapable of self-support, that none of said distributees, to whom money has been paid, as is hereinafter set forth, had any means, other than such as were involved in said estate and in the hands of said administrator, from which to derive a support, and that those of the distributees who are minors have no duly appointed guardian of their property, except the said John, for whom the said Olivia has been duly appointed, and has qualified in that capacity; wherefore, said administrator has, out of said estate, from time to time, made payments and expenditures for the support and maintenance of said distributees, but only in such amounts as were suitable to their property and condition in life, and at such times as they were actually necessary to their comfortable support. And said administrator having filed, at the same time, and as part of his said statement and account heretofore filed for this settlement, a schedule together with the proper vouchers and evidence in support of the same, showing the several amounts paid for, and to each of the distributees, and the date and character of such payments, including certain sums reported upon his prior settlements as paid, but which have not hitherto been allowed to him, and having, also submitted proof of the accuracy and truth of the charges contained in said schedule, which proof is sufficient and satisfactory to the Court, and from which it appears that said administrator has so paid to the said Olivia for herself, the sum of three hundred and eighty-one dollars and forty-three cents; to the said Olivia, as guardian of the said John, the sum of two hundred and seventy-six dollars and nine cents; for the support and maintenance of the said Thomas, as aforesaid, the sum of two hundred and seventy-two dollars and twenty-five cents, and for the support and maintenance, as aforesaid, of the said Jimsey, the sum of three hundred and thirty-seven dollars

and twenty cents ; now, on motion of the said Jones and after a full hearing of said matters it is adjudged by the Court that said several payments made to, and on account of said distributees, as aforesaid ought to be, and the same are hereby accordingly allowed to said administrator, to be deducted by him from their said respective distributive shares. And such deduction being now made : It is ordered, adjudged and decreed, that the said Olivia have and recover from the said Jones the sum of five hundred and eighteen dollars and fifty-seven cents ; that said Olivia have and recover, as the said guardian of said John, and for his use, the sum of six hundred and twenty-three dollars and ninety-one cents ; that said Thomas have and recover from the said Jones the sum of six hundred and twenty-seven dollars and seventy-five cents ; that the said Jimsey have and recover from the said Jones the sum of five hundred and sixty-two dollars and eighty cents ; that the said Johnstone have and recover the sum of nine hundred dollars from the said Jones, and that the said Elizabeth Flox have and recover from the said Jones the sum of nine hundred dollars—the said several sums being the true balances to which said distributees are entitled respectively—for which said several sums executions may issue in favor of the said party entitled and against said Jones.

*If, as is sometimes the case, the Court is not furnished with sufficient evidence to justify a distribution without further inquiring, conclude this entry as follows, in place of the above decretal order, viz : But the Court not being now sufficiently advised as to how said distribution is to be made : (or, as to who are the proper persons entitled to distribution in said estate—or any other reasonable cause for a postponement of distribution.) It is ordered, that all questions and matters pertaining to said distribution be postponed to, and set for hearing on the — day of —, 18—. (See No. 186 for the final order.)*

*If personal property, in specie, is remaining on hand to be divided, then, after distributing the money, proceed as follows, viz: (Code § 1792, et seq., and § 1822.)* And it being shown to the Court, that the deceased left him surviving his widow, *(the heirs need not be repeated if named before,)* Mrs. Olivia Rich and five children, viz: the two minors, aforesaid, and Johnstone and Jimsey Rich, and Elizabeth who is now the wife of one Joseph Flox, each of whom are entitled to share equally of the personal estate of said deceased, wherefore the said personal estate must be divided into six shares or equal parts; and it, also, appearing to the Court, from a schedule filed along with, and as part of said statements and accounts, that of the personal estate, other than money, of the decedent, there now remains in specie, and subject to distribution among the distributees aforesaid, a considerable amount of personal property, which is described as follows, to wit: *(Here set out the property as the same is described in the schedule.)* It is ordered by the Court, that A. B., C. D., E. F., G. H., and I. J., who are disinterested persons, and residents of this county, be, and they are hereby appointed commissioners, and as such they are directed to make distribution of said property equally to each of said heirs, after having first taken an oath to make the same fairly and impartially if the same can be made, and to make due return of their proceedings in writing, signed by them, to the Court, on or before the — day of —, 18—, in accordance with the law in such cases made and provided.

*In all cases where there are minors, or persons of unsound mind, not having a general guardian, the following should be inserted in the concluding part of the order, viz: And the said administrator is hereby ordered to retain the said share of the said Thomas until the further order of the Court, or until a suitable guardian shall be appointed for him; (or if he is near his majority, until he shall attain the age of twenty-one years,) and also to retain the said share of the said*



Jimsey, until the further order of the Court, it appearing to the Court to be questionable, whether the said Jimsey is of sound mind.

*And in all cases the following should conclude the entry when distribution is finally decreed, viz :* It is further ordered, that all accounts, vouchers, evidences and statements on file, relating to this and any former settlement, and all other paper writings on file respecting said estate, be recorded.

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[ No. 182. ]

COMMISSION to make DISTRIBUTION of PERSONAL PROPERTY.

*State of Alabama,* }  
*Mobile County.* } Probate Court of said County.

To A. B., C. D., E. F., G. H. and I. J., Greeting :

Whereas, the estate of Richard Rich, deceased, of which John Jones is the administrator, in said Court, is possessed of certain personal property, described and located as follows, viz : (*Here insert description*) which property has been directed by due decree of said Court, to be divided equally into six parts or shares—one share or part to be distributed to Mrs. Olivia Rich, the widow of said decedent, one to John, one to Thomas, one to Jimsey and one to Johnstone Rich, and one to Elizabeth Flox, the wife of Joseph Flox ; the said parties being lawfully entitled to an equal distribution among them of all the above described personal property of said decedent : And you, and each of you, having been duly appointed, in and by said decree, commissioners to make such distribution :

Now, therefore, you are hereby commanded, after having first taken an oath to make such distribution fairly and impartially, if the same can be made, to proceed and make such distribution of said property according to said decree

and to your said oaths, and to make return to said Court, of your proceedings in the premises, in writing, signed by you, on or before the — day of —, 18—.

Witness, Edwin Rust, Judge of said Court, at office, in the city of Mobile, this the — day of —, 18—.

EDWIN RUST, Judge.

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[ No. 183. ]

REPORT of COMMISSIONERS as to DISTRIBUTION of ESTATE.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Probate Court of said County :

The undersigned, the commissioners heretofore appointed by said Court, to make division of certain personal property, of the estate of Richard Rich, deceased, equally between Olivia Rich, the widow of said decedent, and John, Thomas, Johnstone and Jimsey Rich, and Elizabeth, the wife of Joseph Flox, late Elizabeth Rich, beg leave to report to your Honor, that after having first taken an oath to make such distribution fairly and impartially, if the same could be made, they proceeded to the discharge of the duty assigned them by said appointment, and in pursuance of the directions of the annexed commission.

Said commissioners further report, that after having carefully examined and valued each item of the property specified in said commission, they are of opinion that said property cannot be equitably and fairly divided among said distributees, and therefore, recommend that said property should be sold.

*If the conclusion is that it can be divided, proceed thus, in place of the last paragraph, viz :* Said commissioners further report, that they carefully examined and estimated the

value of each item of the property mentioned in said commission, and then proceeded, impartially and fairly, to divide the same into six lots or shares, hereinafter particularly set forth and described, and which they think just and equitable towards each and all of said distributees; and that after they had so divided said property, they set down the said respective shares upon separate slips of paper, and numbered each slip with a number, from one to six, and so determined, by lot, the parcel or share aforesaid which should belong to each of said distributees: Upon which allotting, the said Olivia became entitled to—(*here describe her share*; the said John became entitled to—*here describe the share of John, and so on, until the shares are all disposed of.*)

And said commissioners, believing said distribution to be fair, just and impartial, beg leave to submit the same as the report of their final action in the premises, and request that they may be discharged, with a proper allowance for their time and trouble. And as in duty bound, &c.

Subscribed and sworn to by A. B., C.	}	A. B.
D., E. F., G. H. and I. J., this the		C. D.
— day of —, 18—.		E. F.
EDWIN RUST, Judge.		G. H.
		I. J.

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[ No. 184. ]

ORDER CONFIRMING DISTRIBUTION made by the COMMISSIONERS.

—Code § 1796.

<i>Richard Rich, deceased, Estate of, }</i>	}	18
<i>Confirmation of Distribution.</i>		

A. B., C. D., E. F., G. H. and I. J., commissioners appointed by this Court, as will fully appear by reference to the decree thereof, made and entered in the premises, on the — day of —, 18—, to make distribution of the personal property of said estate, having made such distribution

in accordance with said decree, and with the law in such cases made, and returned their proceedings to this Court, in writing, signed by them, by the day specified for such return in said decree ; and no exceptions having been filed to said report, and the same having been duly examined, and being adjudged, by the Court, to be just and equitable towards each and all of the distributees ; and more than thirty days having elapsed since said return of said report : It is ordered and decreed, that said report be, and the same is hereby fully ratified, and in all things confirmed, and, together with said commission, ordered to be recorded, as part of this decree. And the said commission and report being read, are as follows, to wit : (*Here insert a full copy of the commission and report.*)

It is further ordered and decreed, that John Jones, the administrator of said estate, be, and he is hereby directed to make delivery of said property to each of said distributees as distributed and allotted in said report, and that, on failure for ten days from this day, to make such delivery, execution may issue to enforce this judgment. It is further ordered, that said administrator pay the costs of this proceeding, including two dollars and fifty cents to each of said commissioners, as compensation for their services in the matter.

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[ No. 185. ]

ORDER to SELL property in conformity to the REPORT of COMMISSIONERS appointed to DIVIDE.—Code § 1796, et seq.

<i>Richard Rich, deceased, Estate of, }</i>	18
<i>Order of sale for distribution. }</i>	

A. B., C. D., E. F., G. H. and I. J., the commissioners heretofore duly appointed, by the Court, to make distribution among the distributees entitled, of the property of said estate, described in the order appointing said commissioners, having duly returned to this Court, their report in writing, signed by them, by the day specified in the order of

Court making such appointment, setting forth, in said report, among other matters, that said property cannot be fairly and equitably divided among the distributees of said estate, who are named in said report, and recommending that said property should be sold; and more than thirty days having elapsed since said report was so returned to the Court, and no exceptions to said report having been filed; and the Court having examined said report, and being fully satisfied therewith: It is ordered and decreed, by the Court, that John Jones, the administrator of said estate, do proceed and sell said property at public auction, in front of the Court house, to the highest bidder for cash, after having first given thirty days notice of the time, place, and terms of sale, together with a description of the property, by publication, once a week until the day of sale, in the Mobile Daily Register, a newspaper published in this county, and that said administrator make due report as to how he has executed this decree. It is further ordered, that said report of said commissioners be recorded as part of this decree—and the same is done accordingly, to wit: (*here follows the record.*)

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[ No. 186. ]

ORDER for DISTRIBUTION, FINAL SETTLEMENT having been previously made.

*Richard Rich, deceased, Estate of, }  
In the matter of distribution. }*

18

This day comes John Jones, the administrator of said estate, and files his application in writing and under oath, for a distribution of the residue of said estate, now remaining in his hands, among those entitled to the same; and it appearing to the satisfaction of the Court, that John Rich, who is aged about fourteen years, and Thomas Rich, who

is aged about fifteen years, and Jimsey and Johnstone Rich, and Elizabeth, now wife of Joseph Flox, children and heirs at law of said decedent, and who, together with Olivia Rich, the widow of said decedent, are the sole and only persons entitled to share in the final distribution of said estate ; and it further appearing, that said Olivia is now the guardian of the person and estate of the said John, she having been appointed and duly qualified, in this Court, as such guardian. And it further appearing to the Court, from an inspection of the records, that a final settlement of said estate was made by said administrator on the — day of —, 18—, except as to the matter of its distribution ; upon which settlement there was found remaining in the hands of said administrator, a balance of ——— dollars, in cash, subject to division among those entitled, as aforesaid, as distributees of said estate; and the Court being satisfied from the evidence, and after due consideration of this case, that said widow and each of said heirs are entitled to equal shares of said fund, that is to say, to one-sixth part of said fund for each : It is ordered and decreed, (*proceed as in the previous form, where money only was distributed, adding, also, the cautionary part of the order which relates to the shares of Thomas, as a minor without a guardian, and of Jimsey, as a person of questionable soundness of mind.*)

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[ No. 187. ]

RECITAL necessary to be made in a Decree or Order when the Judge has been of COUNSEL in the matter, for, or is RELATED to any party.  
—Code § 560.

Now comes A. B. and C. D., (*naming all who are interested as parties*) who are all the persons interested in the matter now pending, and all of whom are of full age, and who now, here in open Court, request the Judge of this

Court, who was formerly the counsel of ——— in the matter of his interests connected with said estate, to sit in, and to hear and determine the matter of said petition: And the said request and consent of said parties now being made of record, in accordance with the requirements of the Code in such cases, the Court proceeds to hear said petition.

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[ No. 188. ]

REPORT of INSOLVENCY.—Code § 1828, et seq.

To the Honorable Edwin Rust, Judge of the Court of Probate of Mobile County :

William Propper, the administrator in said Court, of the estate of John Knipper, deceased, respectfully represents to your Honor, that he is satisfied that the entire property of said estate is insufficient to pay its debts ; and, being so satisfied, your petitioner, as is his duty in such case, hereby reports to your Honor, that, to the best of his knowledge and belief, said estate is insolvent ; in verification whereof, he herewith, also, files his statements, as required by law, to wit :

1st. (*A statement of all the personal property to be inserted here.*)

2d. (*Here insert a description of all the real estate.*)

3d. (*Here insert a statement of all the indebtedness, together with the names of the creditors ; and, if known, the place of residence of each.*)

All of which is respectfully submitted to your Honor, that the same may be duly inquired of, as the law directs.

WILLIAM PROPPER, Adm'r.

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State of Alabama, } Before me, Edwin Rust, Judge of  
Mobile County. } Probate in and for said county and  
State, personally appeared William Propper, administrator  
of the estate of John Knipper, deceased, who, being duly

sworn, deposes and says, that the foregoing report and statements are correct to the best of his knowledge, information and belief.

WILLIAM PROPPER.

Subscribed and sworn to, &c.

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[ No. 189. ]

ORDER APPOINTING a day to HEAR and DETERMINE upon the question  
of INSOLVENCY.

*John Knipper, deceased, Estate of, }  
As to insolvency of. }* 18

This day came William Propper, administrator of said estate, and filed with the Judge of this Court, his report and statements in writing, duly verified by oath, alleging that said estate is insolvent, to the best of his knowledge, information and belief: It is, therefore, ordered by the Court, that the — day of —, 18—, be appointed a day to hear and determine as to said report. It is further ordered, that notice of the filing of said report, and of the day above appointed to hear and determine upon the same, be given to the creditors of said estate by forwarding notices to them to be placed in the mail, postage paid, properly addressed, thirty days before said day of hearing, where the residence is known; by posting notice on the Court house door for the same length of time; and by publication once a week for the same length of time in the *Mobile Daily Register*, a newspaper published in said county.



## [ No. 190. ]

FORM of NOTICE of REPORT and STATEMENTS of INSOLVENCY, for PUBLICATION and POSTING at Court house door, under the foregoing order.

*State of Alabama,* }  
*Mobile County.* } Probate Court of said County.

*John Knipper, deceased,* } This day came William Prop-  
*Estate of.* } per, administrator of the said es-  
 tate, and filed his statements and report, setting forth that  
 said estate is insolvent, and praying that it may be so de-  
 creed : It is ordered, that the — day of —, 18—, be ap-  
 pointed a day for hearing and determining the same, at which  
 time all persons in interest can appear and contest the same,  
 if they think proper.

EDWIN RUST, Judge.

## [ No. 191. ]

NOTICE to be sent by mail to CREDITORS of an INSOLVENT ESTATE.—  
 See Code § 1832 and 1839.\*

*State of Alabama,* }  
*Mobile County.* } Probate Court, 18

*John Knipper, deceased,* } To Cyrus Oermuch, a creditor of  
*Estate of.* } said estate :

The said estate having been reported (*or, declared*) insol-  
 vent, the — day of —, 18—, has been appointed to hear  
 and determine upon said report—(*or, for A. B., the admin-  
 istrator of said estate, to appear and make a settlement of  
 his accounts*)—you are, therefore, hereby cited to be and  
 appear at my office, at the Court house of said county, on  
 said day, to contest the same, if you think proper.

Witness, my hand, this the — day of —, 18—, at office.

EDWIN RUST, Judge.

\* This form is so framed as to answer for use before and after the estate has been declared insolvent, requiring a change of only a few words—which are suggested in parenthesis, to suit either case.

[ No. 192. ]

DECREE of INSOLVENCY and an ORDER appointing a day for ADMINISTRATOR to SETTLE, &c.—See Code § 1838, et seq.

*John Knipper, deceased, Estate of.* } 18  
*Decree of insolvency and order to settle accounts.* }

This day having been regularly appointed, by the order of the Judge of this Court, to hear and determine upon the report and statements of the insolvency of said estate, which were heretofore filed by William Proper, the administrator thereof, now comes the said administrator and moves the Court, that said estate be declared insolvent in accordance with said report and statements: And the Court being satisfied, from due examination and proof, that notice of the filing of said report, and of the day set to hear and determine upon the same, has been given to the creditors of said estate, as required by law, and in all respects as directed by the order of Court entered in the premises on the — day of —, 18—; thereupon, the Court proceeds to hear and determine as to the said report: And now, none of the creditors of said estate contesting the correctness of said report: It is ordered, adjudged and decreed, that said estate be, and the same is hereby declared insolvent. It is further ordered, that the said William Proper do file his accounts, vouchers and evidences, within thirty days from this day, for a settlement of his past administration of said estate; and that the — day of —, 18—, (*a day should be named beyond the thirty days, above limited, for filing the accounts, so that parties interested can appear and examine, so as to contest the accounts, if found necessary*)—be appointed as a day for said administrator to appear and make settlement of said accounts; and that notice of this order and decree, and of the time set for making such settlement of said administration be given to the creditors of said estate by forwarding notices to them by mail, postage paid, properly addressed, thirty days before said day of hearing, in all cases

where the residence is known; by posting notice on the Court house door for the same length of time, and by publication once a week for the same length of time in the *Mobile Daily Register*, a newspaper published in said county.

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## [ No. 193. ]

FORM of NOTICE of SETTLEMENT by Administrator, after the Estate has been DECLARED INSOLVENT, for PUBLICATION and for POSTING.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*John Knipper, deceased,* } The estate of said deceased  
*Estate of.* } having this day been declared insolvent by said Court, it is ordered that the — day of —, 18—, be appointed a day for William Propper, administrator of said estate, to appear and make settlement of his accounts, preparatory to turning over the property of said decedent, which now remains unadministered, to whomsoever shall succeed to the further administration thereof; at which time all persons in interest can appear and contest the correctness of said accounts and the allowance thereof, if they think proper.

EDWIN RUST, Judge.

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## [ No. 194. ]

DECREE upon the ACCOUNT of the Administrator upon whose REPORT the Estate has been declared INSOLVENT, and CONTINUING the same Administrator in the Administration.—Code § 1845.

*John Knipper, deceased, Estate of,* } 18  
*Settlement of accounts and continuance of Adm'r.* }

This day having been regularly appointed by the former order of this Court, for William Propper, the administrator of said estate, to appear and make settlement of the

accounts of his past administration thereof, as required by law,—said estate having been heretofore declared insolvent: Now comes the said administrator, and moves the Court to proceed with said settlement. And it appearing to the satisfaction of the Court, that due notice of said order, and of the day appointed for said settlement has been given according to law, and strictly according to the directions of said former order, made and entered by the Court, in the premises, on the — day of —, 18—. And it also being shown to the Court, that said account, vouchers and evidences, were duly filed more than ten days before this day\*; thereupon, the Court proceeds to examine and audit said account: upon which auditing and examination, it appears that said administrator has received of the assets of said estate, the sum of ——— dollars, in cash, and that he has legally and justly expended for said estate the sum of ——— dollars, for the items of which expenditure he produces vouchers and other evidence, which are satisfactory to the Court. And the said administrator now being charged with the said sum of money, ascertained as aforesaid, to have been received by him, and credited by the amount so by him justly paid out and expended, it is found by the Court that there is left in his hands, belonging to said estate, a balance of ——— dollars; and the said account appearing correct: It is ordered, adjudged and decreed by the Court, that the same be, in all things, passed and allowed, as above stated; and that the same, together

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\* I have here inserted an allegation intended to conform to the order of Court next preceding in the series. From the letter of section 1838 of the Code and the sections immediately following, it does not appear but that the codifiers intended the administrator's settlement, in case of insolvent estates, was to be made on the same day when he files his accounts. This does not seem however, to be consistent with the other provisions of the Code touching the subject matter of the settlement of administration accounts; as, in every other instance, it is required that the account, vouchers, &c., shall be on file for three weeks before they can be settled. I can see no good reason why such a requirement should be entirely dispensed with in the settlement now in question. In analogy to the rule in other cases, and as a matter of justice to creditors in this, I would recommend the accounts be ordered to be filed within thirty days after the estate is declared insolvent, and the settlement be required to be made at the end of forty or fifty days, so as to give an intervening opportunity for examination.

with the vouchers and evidences thereof, and all other papers relating to the previous administration of said estate, be recorded.

And none of the creditors of said estate, or their representatives, having attended at this settlement, and nominated to the Court any fit and proper person to administer upon the property, rights and credits, of said estate, which now remain unadministered: It is ordered, that William Propper, the former administrator of said estate, be, and he is hereby continued for the further administration of said estate,—to administer the same according to the provisions of chapter 7 title 4, of part 2, of the Code of Alabama.

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[ No. 195. ]

OATH to CLAIM against an INSOLVENT ESTATE.

*State of Alabama,* }  
*Mobile County.* }

Before me, Edwin Rust, Judge of Probate in and for said county and State, personally appeared James Tickle, who being, by me, first duly sworn, deposes and says: that he knows, of his own personal knowledge, that the annexed (*or, foregoing*) account—(*or, note—or, bond—or, judgment*) for the sum of \_\_\_\_\_ dollars, in favor of \_\_\_\_\_, against the estate of John Knipper, deceased, is entirely correct, and that the same is justly due.

JAMES TICKLE.

Subscribed and sworn to.

The preceding form of affidavit will answer whether the affidavit is made by the claimant or by some other person.—See Code § 1847.

[ No. 196.]

Form of OBJECTIONS, in the nature of PLEAS, to CLAIMS against an  
INSOLVENT Estate.—Code § 1853-54.

*State of Alabama,* } Probate Court.  
*Mobile County.* }

<i>Claim of James Tickle,</i>	}	And now comes the
<i>vs.</i>		said William Propper,
<i>The Estate of John Knipper, de-</i>	}	said administrator, and
<i>ceased, Wm. Propper, Adm'r.</i>		denies the justness of

said claim, and the truth of the allegations made in support of the same; and for specific cause of objection says:

1st. That said deceased was not, at the time of his death, nor is said estate now in any way indebted to said claimant.

2d. That said claim is barred by the statute of limitation of — years.

3d. That neither said claim, nor any statement thereof was presented to any administrator of said estate,—(or, to any executor of the will of said decedent) nor filed in the office of the Judge of said Court, within eighteen months after the accrual of said claim, nor within eighteen months after the grant of letters.

4th. That said claim was not filed in the office of the Judge of this Court, within nine months after said estate was declared insolvent, nor within nine months after its accrual.

5th. That said claim has not been verified by the oath of said claimant, nor by any other person, who knows the correctness of the claim and that the same is due.

6th. That there is no such record as said claimant sets up in this case.

7th. That said claim has been paid.

8th. That said claimant is indebted to said estate in the sum of ——— dollars, which is claimed as an offset against said claim.

## [ No. 197. ]

ISSUE to to TRY CLAIMS against an INSOLVENT Estate.—Code § 1854.\*

*State of Alabama,* } In the Probate Court.  
*Mobile County.* }

*James Tickle, claimant,*  
*against*

*William Propper, administrator of the*  
*estate of John Knipper, dec'd, def'ndt.*

The said claim-  
 ant claims of the  
 said defendant, as  
 such administrator,

the sum of ——— dollars, due by promissory note, for that  
 sum, dated at Mobile, the — day of —, 18—, negotiable  
 and payable at the banking house of the Mobile Savings  
 Company, one year from said date thereof, to the order of  
 claimant, together with interest thereon.

JAMES LAWE,  
 Attorney for Complainants.

## [ No. 198. ]

Order to CITE Administrator to make DISTRIBUTION of an INSOLVENT  
 Estate.—Code § 1856-57.

*John Knipper, deceased, Estate of.* }  
*Order to cite administrator to make distribution.* } 18

It appearing to the Court from an inspection of the records  
 in this estate, that more than twelve months have elapsed  
 since said estate was declared insolvent—(or, more than  
 six months have elapsed since the last distribution was made  
 among the creditors of said estate,) and said administrator  
 not having filed any account, nor otherwise taken any steps  
 to make a settlement of his administration, nor made known

\* No matter what the nature of the claim may be, the form of complaint, or  
 declaration, in use in Courts of law for such demand, is the form proper to be  
 adopted in making up the issue to try its validity in the Probate Court, since  
 the matter to be determined is the same in either forum. A formal complaint is  
 only necessary when objections are interposed in writing.—See Code § 1853.  
 When objections are filed, the complaint and objections will, ordinarily, form  
 the only issue to be determined before the claim can be allowed—the objections  
 being treated as in the nature of pleas, or answers to the complaint.

any cause or reason for such failure: It is ordered, that he be required, by citation to be personally served on him, to be and appear in this Court, on or before the — day of —, 18—, to show cause, if any he has, why he should not make a settlement of his accounts, as such administrator, so that distribution of said estate among the creditors thereof may be had as speedily as possible.

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[ No. 199. ]

Application to have a day set to make SETTLEMENT of the ACCOUNTS of the Administrator of an INSOLVENT Estate, and for DISTRIBUTION.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court:

William Propper, the administrator *de bonis non*, in this Court, of the insolvent estate of John Knipper, deceased, in answer to the citation issued and served upon him by order of Court, requiring him to appear and show cause, if any he has, why he should not make settlement and distribution of said estate among the creditors thereof, begs leave to submit herewith a full and correct account of his said administration, together with his vouchers and evidences relating to the same, and respectfully asks your Honor that a day may be set for making such settlement, and for making distribution of the proper balance of money ascertained to be in his hands, as such administrator, rateably among the creditors of said estate whose claims may be allowed.

Your petitioner respectfully suggests to your Honor, that the settlement and distribution, now proposed, can not be of a final character, inasmuch as there are several claims due to said estate which are in litigation, and, of course, uncollected.—( *Or state any other cause why final settlement can not be had.* )



And, that said settlement and distribution may be made with a due regard to the rights of all persons in interest ; your petitioner prays that your Honor will make and enter the proper orders and decrees in the prémisses, that the proper notice may be given to the creditors of said estate in the manner prescribed in such cases as to insolvent estates, and that your Honor will be pleased to grant any other relief in the prémisses which may be requisite and according to law. And as in duty bound, &c.

WM. PROPPER.

Subscribed and sworn to, &c.

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[ No. 200. ]

ORDER upon the FILING of the ACCOUNT by the administrator, SETTING day for SETTLEMENT and DISTRIBUTION and as to ALLOWANCE of CLAIMS.

*John Knipper, deceased, Estate of.*  
*Account of administrator for settle-*  
*ment and distribution.*

18

This day came William Propper, administrator of said estate, and produces his accounts, vouchers and evidences, duly verified by oath, for a partial—(or, final) settlement and distribution among the creditors of said estate; and said account having been examined, stated and reported by the Judge of this Court, for such settlement: It is ordered, that the same, together with the written statement of said administrator, be filed ; and that the — day of —, 18—, be set as a day for making such settlement, and for the determination of questions as to the allowance of the claims filed against said estate.—(This latter clause, of course would be inappropriate, if the claims should have been allowed on any previous settlement.)

It is further ordered, that notice of the said time set for

making such settlement, and of the nature and purpose thereof, be given to all persons who have filed claims against said estate, claiming to be creditors thereof, by forwarding notice, three weeks before said day, by mail, postage paid and properly addressed, to any such claimant whose residence is known; by posting notice on the Court house door for the same length of time, and by publication for three successive weeks in the Mobile Daily Register, a newspaper published in said county.

If all the claims have been allowed at any previous settlement, then there will be no necessity for giving notice as contemplated by the last clause of the preceding order—except that the publication should be made. If, however, the settlement is to be *final*, or if the allowance of the claims of any of the creditors are to be considered at such settlement, then the order should be to give such notice inasmuch as *all* of the creditors have a right to be heard.

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[ No. 201. ]

ORDERS, passing the ACCOUNT of ADMINISTRATOR of an INSOLVENT estate, determining CONTROVERSY as to CLAIMS of CREDITORS, referring matters to ACCOUNTANT, with INSTRUCTIONS, &c., &c.

<i>John Knipper, deceased, estate of.</i>	}	18
<i>Administrator's account, and setting day</i>		
<i>to determine as to claims of creditors.</i>		

This being the day regularly set for William Proper, the administrator of said estate, to appear and make settlement of his administration accounts heretofore filed, and for the purpose of making distribution, as far as may be, of said estate among the creditors thereof, whose claims may be allowed—said estate having been heretofore duly declared insolvent—and, it being shown to the satisfaction of the Court, that due notice of the time, nature and purpose of said settlement has been given to the creditors of said estate, in all respects as required and strictly according to the directions contained in the order of Court, made and entered in the premises, on the — day of —, 18—. Now comes said administrator, and moves the Court to proceed with said settle-

ment: Whereupon, the Court having audited, examined and stated said account, it is found that said administrator has received of the assets of said estate (and including the balance found at the last settlement, *if there has been a previous settlement,*) the sum of ten thousand dollars, in money, and that he has justly and legally expended for the funeral expenses of the deceased (*as to the preferred claims, payment of which is justified in preference to the general debts of the decedent, see § 1741 of the Code,*) amounting in all to the sum of two hundred and fifty dollars, leaving a balance of nine thousand seven hundred and fifty dollars, for the payment of the fees and charges of administration not already paid, and for distribution among the creditors of said estate: And said account appearing correct: It is ordered, that the same be passed and allowed as above stated; and that the same, together with the vouchers and other written evidences thereof, be recorded.

*If the claims have not been passed upon at any previous settlement, then proceed with the decree as follows viz:* And now at this day, on motion of said administrator,—(*or, on the motion of any of the creditors*) the Court proceeds to hear and determine upon the questions as to the allowance of the said claims of the said respective creditors: And it appearing to the Court, from an inspection of the insolvent docket of claims filed against said estate, and from other proof submitted, that the following named claimants duly filed their respective claims in the office of the Judge of this Court, within the time prescribed by law; and each of said claims, of the said several claimants, having been fully proven to the satisfaction of the Court, and in the manner required by law, to be subsisting claims against said estate: It is ordered, adjudged and decreed, that the claim on file in favor of ———, and of ———, and of ———, (*and so on, going through with the list of claims, which are adjudged to be allowed*) be, and the same are hereby severally allowed and adjudged to be good and valid

claims against said estate, and to be entitled to their respective proportions to be paid out of the moneys in the hands of said administrator, as the same may be hereafter distributed.

*As to the rejected claims proceed as follows:* And it further appearing to the Court, that objections to the allowance of the claim of ———, against said estate, were duly filed in the name of said administrator, within the time and in the manner prescribed by law; now comes ———, a creditor of said estate, and moves the Court that said claim be rejected; and the Court having heard said motion and considered said objections in connection with the proof made as to said claim: It is ordered, adjudged and decreed, that said objections be sustained and the claim of said ———, be, and the same is hereby rejected and disallowed.

*If some of the claims are not ready to be heard, as to which continuances are granted, proceed as follows, viz:* And the claim filed by the Southern Mutual Insurance Company coming on to be heard, it is shown to the Court that the same was filed against said estate in due time, and that said administrator has duly filed objections to the allowance thereof; which objections, it is alleged, in behalf of said company, are not founded in truth: Whereupon, James Lawe, Esq., the attorney of said company, moves the Court for a continuance of the hearing and determination of said claim of said company, for the purpose of procuring proof in support of the same, in opposition to said objections: And said motion having been heard and duly considered by the Court: It is ordered, by the Court, that the further consideration of said claim of said company be continued until the — day of ———, 18— (*or, if the settlement and distribution is partial, until a future day, or until such time as another settlement and distribution shall be had in this estate.*)

*As to claims where continuance is refused proceed thus:* And the claim of the Bank of Old Brunswick, coming on to be heard, together with the objections heretofore duly filed in

this Court, in the name of said administrator, to the allowance of said claim, comes James Lawe, Esquire, the attorney of said Bank, and moves the Court, that the further consideration of said claim, and of said objections, be continued, for the purpose of enabling said claimant to obtain proof in support of said claim; and the Court having heard and considered said motion, and the facts stated, and reasons alleged in support thereof, and being satisfied that the ground upon which said motion is made is insufficient; and the said administrator now moving the Court to overrule said motion and to reject said claim; and the Court being of opinion that said objections to said claim are well taken, and sufficiently proved, and that the same are in no wise properly met or answered: It is, therefore, ordered, adjudged and decreed, that said motion for a continuance be refused and that said claim be, and the same is hereby rejected and disallowed.

*When any suits exist the administrator should be allowed to retain as follows, viz:* And the said administrator having made known by petition, in writing and under oath, and otherwise proved by evidence to the satisfaction of the Court, that there are at this time, certain contested and undecided claims, touching the right of property in and to certain negroes, now pending against him, as such administrator, in the Circuit Court of this county, involving an amount equal to about four thousand dollars, and which claim may possibly come against said estate: It is ordered, that said administrator retain a rateable proportion of the sum hereinafter found to be in his hands, and which sum is the basis of the distribution now about to be made among said creditors, for said claims or suits, in case the same should be terminated against said administrator, and be hereafter allowed in this Court against said estate—said fund so reserved, however, to be always subject to the order of this Court on any future settlement of said estate,

and on any other occasion when it may be proper for this Court to make any order in the premises.

*If the account is long or intricate, it should be referred to a competent accountant, after determining the amount to be distributed, with instructions as to the basis of the account, as follows, viz:* And it appearing from the decree rendered by this Court in this estate, on the — day of —, 18—, upon a settlement of the said administrator's accounts of the expenses and charges of his administration, that he, said administrator, had in his hands, of the moneys of said estate, for the payment of costs to be incurred, and for distribution among the creditors whose claims should be allowed, the sum of ——— dollars; and it appearing that there will be due the officers of this Court, upon the conclusion of this settlement, including the costs now due, and such costs, charges and allowances as will probably become due and payable for and on account of this settlement, the sum of ——— dollars, which amount should be therefore, retained by said administrator; and said costs, expenses and allowances being so retained, it appears to the Court there remains in the hands of said administrator, now to be divided among said claims hereinbefore allowed, the sum of ——— dollars; and it being necessary, in order to ascertain the total amount of the respective claims of each of said creditors whose claims have been allowed, as aforesaid, that a calculation should be made of the amount of interest which may now be due upon each of said allowed claims, as well as of the dividend or share to which each of said claims, with such interest added thereto, to be paid out of the said fund now to be distributed: And the Court being satisfied that such calculations, with a clear statement of the result as to each claim, can be better, and much more satisfactorily made by some person skilled in accounts: It is ordered, by the Court, that the making and statement of such account be referred and entrusted to James Ledger, he being a trusty and skillful accountant, and now consenting to act under this appointment and as he may be

directed in the premises by the Court: It is, therefore, further ordered by the Court, inasmuch as there has been no proof offered as to the rate of interest due, nor as to the period during which any claim is entitled to draw interest, that in making such calculations upon said claims, the said accountant do proceed and make the same in pursuance of the following directions, viz: Allowing interest in all cases at the rate of eight per cent. per annum; to be calculated upon claims evidenced by transcripts of judgments, from the date of such judgment; on claims evidenced by promissory note, or other contract in writing for the payment of money, from the date of the maturity of the same, unless, by the terms thereof, it is specified from what date interest is demandable, in which event the accountant must follow the requirements or stipulations of the contract or note; on open accounts from the date of the presentation thereof to the administrator of said estate, if such date is not apparent from the endorsement on such account, then from the date when said account was first filed in this Court, as a claim against said estate; and upon the claim of ———, interest is to be allowed upon the sum of four hundred dollars, from the 24th day of May, 1844, that being the day when it has been clearly shown said sum was received by the deceased, under a trust that the same should be invested in productive property for the benefit of said ———, which investment was never made. Interest is, also, to be calculated, upon the principles above laid down, on the claim of the Southern Mutual Insurance Company, the consideration of the allowance of which has been hereinbefore continued. The said accountant is hereby further instructed that, after having ascertained the total amount of each of said allowed and continued claims separately, including such interest, to be added to each, as aforesaid, to add the whole together with the said sum of four thousand dollars, the probable value of said suits in said Circuit Court, so that the calculation for said distribution shall be based upon the grand total of the claims now allowed

and those which are contested and undecided, so that the Court may readily see the entire amount due to each creditor set opposite to his, her, their or its name, as also the amount of dividend declared, and due upon the said allowed claims respectively, and which is now to be decreed to be paid by said administrator—and so that said administrator shall have reserved in his hands, out of the moneys now liable to be distributed, the rateable proportion thereof which will be due upon said contested and undecided claims, in case the same shall be hereafter allowed. It is further ordered, that said accountant do make and file his report and statement in the premises, on or before the — day of —, 18—.

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## [ No. 202. ]

## REPORT of ACCOUNTANT as to amount of, and DIVIDEND upon each CLAIM.

*State of Alabama,* } In the Probate Court.  
*Mobile County.* }

I, James Ledger, as the accountant, duly appointed in and by the said Court, to make an account and statement of the claims allowed by said Court against the estate of John Knipper, deceased, as well as of the claims against said estate which are contested, continued and undecided, showing, in said account and statement, the total amount of each of said claims, including interest up to the — day of —, 18—, on all of said claims except upon the sum of four thousand dollars, now in litigation in the Circuit Court; and, also, the amount of dividend to which each of said claims is now entitled, do hereby certify, that the following statement and account have been made by me in strict accordance with the directions and instructions of said Court, as set forth in the order under which I was appointed, as aforesaid, and that the same is in all things correct, calcu-



lating the said dividend upon each claim at the rate of thirty-eight per centum upon said total amount thereof. Said account and statement are as follows, viz:

No. cl'm	Names of Oreditors.	Am't & Int.	Total Am't.	Dividend.
No. 8.	Andrew Balance.....	\$1,000 00		
	Interest 2 years, 9 months and 8 days.	222 05	\$1,222 05	\$464 37
No. 19.	George Cash.....	\$800 00		
	Interest 18 months.....	95 94	895 94	340 45
No. 21.	Southern Mutual Insurance Company.	600 00		
	Interest 24 months.....	96 00	696 00	Reserved.
	Claims in litigation in Circuit Court..	4,000 00	4,000 00	Reserved.

All of which is respectfully submitted to said Court, by  
JAMES LEDGER, Accountant.

[ No. 203. ]

DECREE ascertaining, and adjudging to each CREDITOR the amount of his DIVIDEND.

*John Knipper, deceased, Estate of, }*  
*Dividend upon claims.*

18

And now comes James Ledger, the person to whom was referred, by the order of this Court made on the — day of —, 18—, the claims allowed against said estate, as also certain other claims, the nature and character of which appears in said order of reference, that he might make an account and statement thereof, showing the total amount of each of said claims, and the dividend due thereon, or to be retained on account thereof, and files his report of the manner in which he has discharged said trust; and his said report being read, is in words and figures following, to wit:

*(Here insert the entire report and account.)*

And the Court having examined and found said report and statement in all things correct and in strict accordance with the directions and instructions to said accountant, contained in the order of reference aforesaid; and no excep-

tion or objection having been interposed with regard to said report and statement, or as to any item thereof: It is ordered, adjudged and decreed, that said report and statement of said accountant be ratified and confirmed and made part of this decree; and that each of said creditors whose dividend is not to be retained or reserved, as is shown in the above account, do have and recover of said administrator the amount of his, her, their or its dividend, as shown by the above statement thereof, by said accountant; and that execution issue for the same, in favor of the creditor to whom the dividend to be collected has been above declared.

It is further ordered, that the claims of the said creditors, and all papers and depositions on file, pertaining to this proceeding, be recorded.

And, inasmuch as it is apparent to the Court, that, after a full compliance with the terms of this decree, there will still remain in the hands of said administrator, of moneys undisposed of, and belonging to said estate, the sum of \_\_\_\_\_ dollars: It is ordered, that said money, so remaining, be retained by said administrator to be accounted for at a future day, together with any other assets of said estate which may be unadministered.

A shorter form, and one which will consummate the allowance of the claims, the calculation of their amounts, and the declaration of the dividends on them, all at one and the same sitting, can be easily framed from the preceding forms, if desirable. And, perhaps, where the estate is small, and the claims few in number, so that no great length of time will be required to make the necessary calculations, a single order and decree would be as well. The foregoing mode, however, is believed to be the best. It is more methodical than the short form referred to; is better calculated to ensure accuracy, because it gives ample time for the account and statement to be carefully gone through with, in private, instead of being made up in the hurry of a proceeding trial, and amid the contentions of opposing claimants; and because, when it is carefully made up, written out, and filed upon the day named, all persons interested have a better opportunity of inspection, and can more readily detect errors, justifying and requiring exceptions to the report, than if they are compelled to make their examinations while the settlement is being made. The chief reason in favor of the mode of proceeding in insolvent estates which is indicated by the foregoing forms, is the one last stated—it gives to parties a fair chance to examine fully, before their rights are foreclosed or jeopardized by a final decree thereon.

The foregoing forms are sufficiently full to furnish precedents for entries upon any subsequent settlement. The order setting the day for hearing, requiring publication, and notice to creditors, the manner of passing or rejecting the claims, ascertaining and declaring the dividend and ordering its payment, are all hereinbefore fully set forth.

[ No. 204. ]

## APPOINTMENT of an ADMINISTRATOR GENERAL.

*Administrator General,* }  
*Appointment of.* }

18

This day comes Albert B. Grille and applies to be appointed to the office of general administrator of this county; And the Court being satisfied that said Grille is a fit and proper person for such appointment, and that he is a citizen of this county; and the said Grille having given bond, as such administrator, in the sum of ——— dollars, with A. B. and C. D., as his sureties therein, which bond hath been taken and duly approved by the Judge of this Court; and the office of such general administrator being now vacant: It is ordered and decreed, that said Grille be, and he is hereby appointed to act as such general administrator for this county, and as such administrator general the said Grille is ordered to hold himself in readiness to obey the future orders of this Court in the premises.

[ No. 205. ]

ORDER REMOVING the GENERAL ADMINISTRATOR without NOTICE.—  
Code § 1710.

*Albert B. Grille, Gen. Adm'r.* }  
*Removal of.* }

18

It having been made known, and proven to the satisfaction of the Court, that said Grille, in his capacity of general administrator for this county, and in the administration of the estate of John Jonte, deceased, has been guilty of gross neglect of the interests of said estate, (*or for any other fault authorizing removal, see Code § 1696-'97.*) in this, that he (*proceed and set forth the grounds fully.*) It is ordered, adjudged and decreed, that said Grille be, and he is hereby removed from his said office of general administrator of this

county, and his appointment to said office is now and hereby annulled and altogether revoked. It is further ordered, that said Grille be notified of this decree, and that he be required to proceed, with all convenient speed, to close up and finally settle his accounts with all estates, whereon he is now administering, as such general administrator.

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[ No. 206. ]

PETITION for an INQUISITION of LUNACY, &c.—Code § 2750.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Court of Probate in  
 and for said County and State :

The petition of Jaquelin Pendleton, respectfully represents unto your Honor, that he is first cousin to one George Moon, a male of the age of twenty-six years, who resides with your petitioner in this county ; and who is a lunatic, and quite incapable of governing himself, or of conducting and managing his affairs.

Wherefore your petitioner, being impelled by humane considerations, prays your Honor to take cognizance of the matter of this, his petition ; that a day may be appointed when the same can be heard, and that such other measures may be taken, and proceedings had, in this behalf, as shall be necessary and proper to determine, in accordance with the law in such case made, whether or not the said Moon is a lunatic, an idiot, or *non compos mentis*. And as in duty bound, &c.

JAQUELIN PENDLETON.

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*State of Alabama,* } I, Edwin Rust, Judge of the Court  
*Mobile County.* } of Probate in and for said county and  
 State, do hereby certify, that Jaquelin Pendleton, whose  
 name is signed to the foregoing petition, this day personally

appeared before me, and made oath, in due form of law, that he is fully informed of all and singular, the allegations contained in the foregoing petition, and that he believes the same to be true, as therein stated.

EDWIN RUST, Judge.

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[ No. 207. ]

ORDER SETTING day for INQUISITION of LUNACY, &c., directing that a JURY be EMPANNELLED and the LUNATIC to be before the Court at the TRIAL.—Code § 2750-'51.

*George Moon,* }  
*an alleged lunatic.* }

18

This day came Jaquelin Pendleton and filed his petition, in due form, and under oath, alleging that said Moon is a male, of the age of twenty-six years, residing in this county; and that he is of an unsound mind, and quite incapable of taking care of himself, or of managing his affairs, and praying that the necessary proceedings may be had, so as to have due inquiry and determination as to the truth of said allegations: It is, therefore, ordered, that the — day of —, 18—, be appointed as a day for the hearing of said petition, and that a writ be issued to the sheriff of this county commanding him to summon twelve disinterested persons, of the neighborhood of said Moon, to be and appear in this Court, on said day set for hearing said petition, for the trial thereof. It is further ordered, that a writ be issued to said sheriff requiring him to take the said George Moon, so that he have him in this Court, to be present at said trial, if consistent with the health and safety of said Moon.

[ No. 208. ]

VENIRE to the SHERIFF for JURY for INQUISITION of LUNACY, &c.—  
Code § 2751.

*State of Alabama,* }  
*Mobile County.* } In the Probate Court.

To the Sheriff of said County, Greeting :

You are hereby commanded to summon twelve disinterested, good and lawful men, residents of the neighborhood of one George Moon, an alleged lunatic of this county, to be and appear in and before the said Court on the — day of —, 18—, then and there to make inquisition and to try the question whether the said Moon is of an unsound mind, and incapable, from that cause, of governing himself and of managing his affairs, as hath been alleged to the Judge of said Court, by Jaquelin Pendleton in his petition, filed by him, in said Court, as the relative of said Moon. And have you then there this writ, with your return thereon, showing how you have executed the same.

Witness, Edwin Rust, as Judge of said Court, at office, in the city of Mobile, this the — day of —, 18—.

[ No. 209. ]

WRIT to bring the LUNATIC, IDIOT or NON COMPOS MENTIS before the  
Court at the TRIAL.—Code § 2751.

*State of Alabama,* }  
*Mobile County.* } In the Probate Court.

To the Sheriff of said County, Greeting :

Whereas, Jaquelin Pendleton, as the relative of one George Moon, hath this day filed his petition with the Judge of said Court, alleging that said Moon is a male lunatic, of the age of twenty-six years, and a resident of this county ; and praying that an inquisition of lunacy may be made and had, in due form of law, to try the truth of said allegations, and as to whether the said Moon is incapable of governing himself, and of attending to his affairs : And whereas, the Judge of

said Court hath, by due order entered in the premises, appointed the — day of —, 18—, for hearing said petition, and for the due trial thereof:

Now, therefore, if it be consistent with the health and safety of said Moon, you are hereby required to take his body, so that you may have him in said Court, to be present at said trial, and before the jury then to be empannelled to make said inquisition.

And have you then there this writ, with your return thereon, as to how you have executed the same.

Witness, Edwin Rust, as Judge of said Court, at office, in the city of Mobile, this the — day of —, 18—.

[ NO. 210.]

DECREE of LUNACY, IDIOTCY, or that one is NON COMPOS MENTIS, in accordance with the VERDICT of the JURY.—Code § 2753.

*George Moon,* }  
*a lunatic.* }

18

This being the day appointed, as will appear by reference to an entry thereof, made upon the minutes of this Court, on the — day of —, 18—, for the hearing of the petition of Jaquelin Pendleton, filed by him as the relative of said lunatic, alleging the lunacy of the said Moon, and praying an inquisition thereof, this day comes said Moon, who hath been brought into Court under due process and by the sheriff of this county, to be present at said inquisition, and also comes the said Pendleton, and a jury of good and lawful men, who reside in the neighborhood of said Moon, and who have been duly summoned, to wit: A. B. and eleven others, who, having heard the evidence, the arguments of counsel, and the charge of the Court in the premises, and being first duly tried, empannelled and sworn, well and truly to make inquisition of the facts alleged in said petition, and a true verdict to render, according to the evidence, upon their oaths do say: We, the jury, find that the facts alleged in the

petition are true, and that said George Moon is a lunatic, (*or, idiot—or, non compos mentis, as the case may be,*) as therein stated: It is ordered, adjudged and decreed by the Court, that said petition and all other proceedings thereon, together with the aforesaid verdict, of said jury declaring the said George Moon to be a lunatic, (*or, an idiot—or, non compos mentis*) be recorded. It is further ordered, that the sheriff of this county retain the temporary custody of said lunatic, until the necessary proceedings can be had to appoint some suitable person to be his guardian.\*

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[ No. 211. ]

PETITION for GUARDIANSHIP of a LUNATIC, an IDIOT, or one NON COMPOS MENTIS after INQUISITION.—Code § 2753.

To the Honorable Edwin Rust, Judge of Probate in and for the County of Mobile and State of Alabama :

The petition of Jaquelin Pendleton respectfully represents unto your Honor, that he is an inhabitant of this State, and first cousin to George Moon, who is over the age of twenty-one years, is a resident of this county, and has been duly declared in said Court, in accordance with the provisions of law in such cases made, to be a lunatic, incapable of governing himself, or of managing his own affairs.

Your petitioner further states, that said Moon has property, requiring the care of a guardian, of the value of ——— dollars, as near as your petitioner can estimate the same.

Your petitioner, therefore, prays that your Honor, will investigate the allegations he has above made, and requests that he, the petitioner, may be appointed to be the guardian of the person and estate of the said lunatic, upon giving the proper bond and security. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to.

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\* This last order would only be necessary in peculiar cases—as where the party was dangerous.



[ No. 212. ]

ORDER granting LETTERS of GUARDIANSHIP over the person and estate of a LUNATIC after INQUISITION made and decree thereon.—Code § 2753-'54.

*George Moon,* }  
*A lunatic.* }

18

This day comes Jaquelin Pendleton, and files his petition in due form, in writing and under oath, asking that he may be appointed to be the guardian of the person and estate of said Moon. And it appearing to the Court, from adequate proof, that said Moon has been declared to be a lunatic, according to law in such cases made and provided; and that he is incapable of taking care of himself and of his affairs; that he resides in this county and has property in this State, of the value of ——— dollars, and probably not more; that no guardian has been appointed for said Moon, and that said applicant is an inhabitant of this State, and that otherwise he is a suitable person for such guardianship: Now, therefore, said Pendleton having given bond for the proper amount, conditioned as the law requires, with A. B. and C. D. as his securities therein, which bond, with said securities, hath been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, that said Jaquelin Pendleton, be, and he is hereby appointed to be the guardian of the said George Moon; and it is hereby declared, that said Pendleton, as such guardian, is entitled to the undisturbed custody and control of the person and estate of his said ward, to be held and managed by him in accordance with law in such cases made and provided.

[ No. 213. ]

PETITION for LETTERS of GUARDIANSHIP over a LUNATIC or person non compos mentis, who is a NON-RESIDENT of the State.—See Acts of 1851-'52, page 57.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate of said County and State :

The undersigned, Jaquelin Pendleton, respectfully represents unto your Honor, that he is a resident of said county and State; that he is the uncle and nearest of kin,—(*or state any other good reason*)—in this State, of one George Moon, who resides in the town of ———, State of South Carolina, and that ———, of said town of ———, has the maintenance and charge of said Moon: that said Moon is a lunatic —(*or, is non compos mentis*)—and has been duly so declared by the Court of ———, of the county of ———, State of South Carolina, that being a Court of competent jurisdiction for such purposes, in the said State in which the said Moon resides; and that the said Moon has property and estate in this county, of about the value of ——— dollars, requiring the care of a guardian.

The undersigned, therefore, prays that a day may be set, by your Honor, for the purpose of hearing said petition, and considering the proof which may be submitted in the premises; and that such other steps may be taken, proceedings had, and the necessary orders and decrees made and entered, so that petitioner shall be appointed, upon giving the proper bond and security, to be the guardian of the property and estate of said Moon, which is or may be within this State. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

## [ No. 214. ]

Order SETTING day to hear PETITION for GUARDIANSHIP over the ESTATE or PROPERTY of an alleged LUNATIC, who is NON-RESIDENT.  
—See Acts 1851-'52, page 87.\*

George Moon, a non-resident }  
lunatic, as is alleged. }

18

This day came Jaquelin Pendleton, and filed his petition, in writing and under oath, stating, among other things, that said Moon, resides in the town of Aiken, in the State of South Carolina, with A. B., who has the maintenance and charge of him; that said Moon is a lunatic—(*or, is non compos mentis*)—and that he has been so declared by a competent tribunal of the said State of his residence; that he has property in this county requiring the care of a guardian; and praying that said allegations may be duly inquired of, and that he, said petitioner, as the nearest of kin to said lunatic—(*or for any other good reason, following the allegation in the petition*)—may be appointed to be the guardian of the property, in this State, of said lunatic:—(*or, person non compos mentis*)—It is, therefore, ordered, that said petition be set down for hearing on the — day of —, 18—; (*naming a period distant not less than sixty nor more than ninety days*) and that said Moon be brought into Court, as a party to this proceeding, by publication, of this order, to be made as soon as may be, and to be continued once a week, for four consecutive weeks, in the —, a newspaper, published in this county; by posting a copy of this order upon the Court house door of this county, and by sending by mail, postage paid, another copy thereof to said—(*the custodian of the lunatic*)—and to said Moon, one to each, to be separately directed and sent, addressed to them at Aiken, in said State of South Carolina; such posting and sending by mail to be

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\* As to the practice which is required by the terms of the act under which this proceeding is carried on, and with regard to which this order is drawn—see rules 17, 40 and 41 of “Rules for the regulation of the Practice in Chancery,” commencing on page 717, of the Code, those being the rules in force at the time of the adoption of the act in question.

done within forty days from this date—and that said Moon, or such other person as may lawfully appear for him, be required to answer said petition and show cause against the same, on or before the — day of —, 18—, (*naming a day at least ten days before the day above set for hearing the petition*) —as on failure so to do, the Court will appoint some person as guardian *ad litem* to contest said petition in behalf of said Moon.\*

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[ No. 215. ]

DECREE appointing a GUARDIAN for a NON-RESIDENT LUNATIC, on proof that he has been duly so declared in the State of his residence:

George Moon, }  
a lunatic. }

18

This being the day set, as appears by the order of this Court entered in the premises on the — day of —, 18—, for the hearing of the petition of Jaquelin Pendleton, heretofore filed in this Court, praying that he may be appointed guardian of the property, in this State, of said Moon, this day comes the said Pendleton, and moves the Court to proceed with the hearing of said petition, and that the prayer thereof may be granted; and, it being shown to the Court, by proof which is competent and satisfactory, that publication hath been duly made and copies thereof duly posted, mailed and directed, in all respects strictly as required in and by the said former order of this Court; and ———, who was heretofore duly appointed, as is manifest by reference to the order of Court making such appointment, to act as guardian *ad litem*, for said Moon in this proceeding, now appearing in open Court, consenting to act, and, in writing, denying all the allegations contained in said

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\* An order should be made, appointing a guardian *ad litem*, on the date last named in the above order, For a form, see the form used for such purposes on the Probate of a Will.

petition; and the Court having heard said cause upon the proof, and being now satisfied that said proof fully sustains the allegations of the petition; and said Jaquelin Pendleton having given bond and security in such penalty and with such condition as is required by law, which bond and security hath been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, that said Pendleton be, and he is hereby appointed to be the guardian of the property and estate of said Moon, within this State, and authorized to hold, manage and account for the same, as such guardian, the same as guardians whose appointments relate to minors in this State.

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[ No. 216. ]

PETITION for GUARDIANSHIP of an INFANT, who has property within the State, but who is a NON-RESIDENT.—See Acts of 1855-'6, page 30.

To the Hon. Edwin Rust, Judge of the Probate Court, in and for the County of Mobile and State of Alabama :

Your petitioner, Jaquelin Pendleton, who resides in this county, respectfully represents unto your Honor, that John Jaquelin, a minor, under the age of fourteen years, is a son of petitioner's half brother, James Jaquelin, now deceased : That said John now resides with his mother, Sarah Jaquelin, in the city of Richmond, State of Virginia, and has no guardian in this State : That said John has an estate, in his own right, in this county, consisting of lands, &c., of the value of about two thousand dollars ; and that it is necessary some person should be appointed to act as guardian for said property or estate.

In view of the foregoing facts, all of which your petitioner is ready to verify by such proof as may be required, petitioner prays, that he may be appointed to be the guardian of said estate of said minor, upon giving bond and security as required by law. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

[ No. 217. ]

ORDER APPOINTING GUARDIAN of NON-RESIDENT MINOR.—See Acts  
1855-6, page 30.

*John Jaquelin,* }  
*a non-resident minor.* }

18

This day comes Jaquelin Pendleton, a resident of this county, and files his petition in writing and under oath, praying that he may be appointed to be the guardian of the property of said minor in this State; and it being shown to the satisfaction of the Court, that said minor is under the age of fourteen years; that he resides with his mother in the city of Richmond, in the State of Virginia, and has no guardian in this State; that he has an estate in his own right, in this county, consisting of lands, of the value of about two thousand dollars, and that it is necessary some person should be appointed to act as guardian of said property or estate; and the said Jaquelin Pendleton having given the necessary bond and security, with the proper condition thereunder written, in all respects as required by law, which bond has been duly taken and approved by the Judge of this Court: It is ordered, adjudged and decreed, that—(*the concluding or decretal part of this order is the same as in the case of the appointment of a guardian for a lunatic who is non-resident—which see No. 215.*)

[ No. 218. ]

Form of PETITION for general LETTERS of GUARDIANSHIP of Minor.—  
Code § 2012.

To the Hon. Edwin Rust, Judge of the Court of Probate in  
and for the County of Mobile:

The petition of Jaquelin Pendleton, respectfully shows unto your Honor, that he resides in this State; is the father of Philip Pendleton, a minor under—(*or, over*)—fourteen years of age, and who resides in this county.

Your petitioner further represents, that said Philip has an estate in his own right, of about the value of ——— dollars, —(*stating the facts in full\**)—and respectfully prays your Honor that letters of guardianship over the person and estate of said Philip may be granted him, upon his giving bond in the proper sum and with the requisite security.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

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[ No. 219. ]

ORDER for LETTERS of GUARDIANSHIP upon the NOMINATION of the minor in OPEN COURT.—Code § 2013.

<i>Philip Pendleton, a minor, over fourteen. }</i>	18
<i>Grant of letters of guardianship. }</i>	

This day came the said minor, who is over the age of fourteen years, and, in open Court, nominated Jaquelin Pendleton, his father, and requested the Court to appoint the said Jaquelin to be the guardian of him, the said minor. And the said Jaquelin having filed his written petition under oath, setting forth, among other things, that he is the father of said minor; that he, together with said minor, resides in this county, and that the only property of said minor consists in an annuity of about three hundred and forty dollars, which, it is alleged, is required to be expended, annually for the maintenance and education of said minor: It is, therefore, ordered and decreed, that letters of guardianship over the person and estate of the said Philip Pendleton be granted to

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\* If the minor is over fourteen, and appears in Court and nominates, it is sufficient if that fact is shown by the decree granting the letters. If such minor does not appear, but has his choice certified by a magistrate, then insert a statement, something like the following, at the point, in the above form, where the figure appears which is at the head of this note, viz: "Your petitioner herewith produces and files in Court the nomination of said Philip, duly made by him, and certified in writing, by A. Ball, a justice of the peace, of this county, in which the said Philip requests that petitioner shall be appointed by your Honor, to be his guardian."

the said Jaquelin Pendleton, upon his entering into bond with sufficient security in the sum of one thousand dollars; and the said Jaquelin having executed such bond, with John Hohn and Henry Case as his securities therein, and duly filed the same in the office of the Judge of this Court: It is ordered, that the same be approved, and that said letters do forthwith issue to the said Jaquelin Pendleton: It is further ordered, that said application be recorded.

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[ No. 220. ]

NOMINATION of a Guardian by a minor over the age of fourteen years,  
CERTIFIED by a JUSTICE of the Peace.—Code § 2013.

To the Hon. Edwin Rust, Probate Judge of the County of  
Mobile:

Your petitioner respectfully represents unto your Honor, that he is a minor, over the age of fourteen years, and a resident of this county; that he has an estate in his own right, —(or, is entitled to an annuity amounting annually to the sum of ——— dollars,—or *name any thing else belonging to the minor, making guardianship necessary*)—and is advised that it is necessary that he should have a guardian appointed by your Honor, and that it is proper that he should choose said guardian: Your petitioner therefore begs leave to nominate to your Honor, for his guardian, his father, Jaquelin Pendleton, of this county, and to ask that he may be duly appointed.

PHILIP PENDLETON.

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*State of Alabama,* } I, A. Ball, a justice of the peace, in  
*Mobile County.* } and for said county and State, do hereby  
certify, that Philip Pendleton, a minor, over the age of fourteen years, and who is known to me, appeared before me this day; and that, having heard the foregoing petition, by



him subscribed, carefully read over, he acknowledged to me that he voluntarily signed and preferred said petition to the Judge of Probate of said county.

Given under my hand, this the — day of —, 18—.

A. BALL, J. P. M. C.

[ No. 221. ]

Entry when the MINOR is over fourteen and has his NOMINATION of a  
GUARDIAN CERTIFIED by a JUSTICE of the Peace.

*Philip Pendleton, a minor, over fourteen. }*  
*Grant of letters of guardianship. }* 18

This day comes Jaquelin Pendleton, and files his petition, in writing, and under oath, praying that he may be duly appointed to the guardianship of the person and estate of said minor; and, among other things, setting forth in his said petition, that he resides in this State; is the father of said minor, who is over the age of fourteen years, and who resides in this county; and that said minor is entitled to property in his own right, of the value of about the sum of ——— dollars. And A. Ball, a justice of the peace, in and for said county, having, in due form and in writing, certified to the Judge of this Court, that the said Philip hath duly nominated the said Jaquelin to be his guardian: It is ordered and decreed, &c.—(*concluding the order in the usual form.*)

[ No. 222. ]

GUARDIANSHIP—LETTERS OF.

*State of Alabama, }*  
*Mobile County. }*

Whereas, on this the — day of —, 18—, George Goode-  
now, has been duly appointed by the Probate Court of said  
county and State, to be guardian over the estate—(*or, person*  
and estate) of George Norcross, a minor, over—(*or, under*

the age of fourteen years;—*or*, a minor who resides out of this State—*or*, a lunatic—*or*, a lunatic who resides out of this State)—and the said William Goodenow, having complied with the requisites of the law in such cases made and provided: These are, therefore, to give said Goodenow, in whose fidelity, in this behalf, we very much confide, full power and authority to demand, receive and secure, all and singular, the estate, and all debts, dues, claims and demands whatsoever, to said minor in anywise belonging;—and to do all other acts and things concerning said guardianship, in as full and complete a manner as if the same was herein particularly expressed.

Witness, Edwin Rust, Judge of said Court, this — day of —, 18—.

EDWIN RUST, Judge.

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[ No. 223. ]

PETITION to SELL LANDS under § 2029 of the Code, or the first clause of the Act passed in 1851-'2, (Pamphlet Acts, p. 84,) for REINVESTMENT of the proceeds, or LOANING at INTEREST.\*

*State of Alabama,* }  
*Mobile County.* } Court of Probate of said County.

To the Hon. Edwin Rust, Judge of said Court:

The petition of Jaquelin Pendleton, guardian, duly appointed and qualified in this Court, of John Jaquelin, a minor, (*state whether the minor is over or under the age of fourteen years; and, if the minor resides out of this State, or is under the age of fourteen years, name in whose custody and where,*) respectfully shows unto your Honor, that his said ward is the owner of certain real estate, described as follows, viz: (*Here state location, description and quality of the land,*) and that it would be to the interest of said minor, (lunatic, or person non compos mentis, *as the case may be,*)

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\* For the orders of Court, &c. upon this and the succeeding petitions, under said act, see forms No. 75, 76, 77, 78 and 79.

to sell said real estate and invest the proceeds in personal property, or put the same out at interest—(*Here set forth the particular facts relied upon to show that such sale and investment would be to the interest of the minor, as above alleged.*)

In consideration of all which your petitioner prays, that some suitable person may be appointed to act as guardian *ad litem*, for, and to represent and attend to the interests of said minor, in this proceeding: that the necessary commissions may be issued, at the proper time, to take testimony in the premises: that a day may be set for hearing said petition, and the proofs to be submitted under the same; and that such other proceedings, orders and decrees may be had and made as may be necessary to effect such sale and reinvestment. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

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[ NO. 224. ]

PETITION under the third clause of the Act last named to sell the REAL RATHER THAN THE PERSONAL ESTATE for the purpose of PAYING DEBTS, or for MAINTENANCE.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate of said County :

The petition of Jaquelin Pendleton, guardian, under the appointment of said Court, of John Jaquelin, an idiot, (lunatic, or person non compos mentis,) who resides in this county, (or, who is in the care and custody of Philip Frost, in this county,) respectfully represents unto your Honor, that he has been compelled to contract debts for the comfortable maintenance and support of his said ward to the amount of one thousand dollars, viz: (*Here state the names and the amounts due to each of the creditors, and what the expenditure was for, and the circumstances which justified it*)—

which said sum, of said indebtedness, it is not probable can be paid out of the income derivable from the property of said ward.

Your petitioner further represents, that said ward is the owner of five hundred acres of land, which is unproductive, and cannot be advantageously rented, used or cultivated for, or on account of said ward—which land is described as follows, viz: (*Insert description, location and quality of land*)—and that said ward is also the owner of four slaves, which is all the personal property he owns, and all of which said slaves are young and valuable; one of whom is a carpenter; one a house servant, and the other two of whom are common laborers: that all of said slaves hire readily for high wages, and are easily managed, and taken care of at small expense to said ward.

In consideration of which facts, your petitioner alleges, that it will be more advantageous to the interests of the estate of his said ward, to sell the said real, rather than the said personal property, and therefore prays for authority to sell said land; and that all such notices, proceedings, orders and decrees may be had and made as may be necessary and proper, in the premises, to effect such sale according to law in such cases made and provided. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

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[ No. 225.]

PETITION under clause second, Acts last named, to INVEST the MONEY of  
a MINOR in REAL or PERSONAL ESTATE.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of Probate in and for  
said County and State:

Your petitioner, Jaquelin Pendleton, respectfully shows, that he was appointed by, and has duly qualified in said

Court, as the guardian of John Jaquelin, an infant over the age of fourteen years, (*or*, an infant under the age of fourteen years—*or*, a lunatic—*or*, a person non compos mentis, *as the case may be*, and who is in the custody of Philip Frost,) and who resides in this county: that, as such guardian, he has come into the possession of, and now has about the sum of ten thousand dollars, in cash, belonging to his said ward; no part of which sum your petitioner verily believes, now is, or probably will be required for the comfortable support, maintenance or education of said ward.

Your petitioner further states, that he is of opinion, and thinks he can make it appear by competent proof, to the satisfaction of your Honor, that it will be advantageous to the estate of said ward, that said money should be invested in the purchase of negroes, (*or*, put out at interest, *as the petitioner may think best.*)

Your petitioner, therefore prays, that a day may be set for hearing this petition, and that all such other proceedings, orders and decrees may be had and made, as may be requisite, to enable your petitioner to dispose of said money according to law, in such cases made, and the practice of this honorable Court in the premises. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

[No. 226.]

PETITION to INVEST MONEY under the fourth clause of the Act last named.\*

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of the Court of Probate of said County :

The petition of the undersigned, Jaquelin Pendleton, who has been duly appointed by, and was qualified in this Court, as guardian of John and James Jaquelin, minors, over the age of fourteen years, (*or*, minors under the age of fourteen years, and who are in the custody of Philip Frost,) who resides in this county, respectfully shows : That, by an order of this Court, made on the — day of —, 18—, your petitioner was authorized and ordered to keep the estate of said minors together for the term of five years.

Your petitioner further shows, that money, belonging to the estate of his said wards has accumulated to the amount of five thousand dollars, which, he verily believes, is not required for the use of the estate of said wards in any way : Your petitioner further shows, that he has a good opportunity to loan out said money to Joseph Billsborrow, at the rate of eight per centum, per annum ; payable quarterly, and for the term of three years, upon the joint bond, payable as aforesaid, of said Billsborrow, Abram Shore and Daniel Done ; each of whom, your petitioner considers ample and sufficient security for an amount largely above the sum aforesaid.

Your petitioner being fully convinced, that such an investment of said sum will be greatly to the advantage and interest of his said wards, prays your Honor for an order, authorizing such loan, upon the terms, and with the securities aforesaid. Your petitioner further prays, that your Honor

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\* This form, with slight alterations, will answer for an executor or administrator, under the same clause of the act, when authorized to keep an estate together.

will grant, and cause to be made, all such orders and decrees as may appear to be necessary and proper, to effect said purpose of your petitioner, in the premises, according to the requirements of law. And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

[ No. 227. ]

PETITION to SELL, to MAINTAIN and EDUCATE WARD, under section 2027 of the Code.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The petition of Jaquelin Pendleton, guardian, duly appointed by, and qualified in said Court, of John Jaquelin, a minor, (*or, a lunatic, or, person non compos mentis, as the case may be,*) respectfully represents unto your Honor, that the rents and profits of the estate of his said ward (an inventory of all which has been duly filed in this Honorable Court by your petitioner, and to which reference is now prayed,) are insufficient for his maintenance and education.

Your petitioner has made a careful estimate of what it will cost to maintain his said ward, and states that it will amount to about the sum of four hundred and fifty dollars per annum, as near as petitioner can ascertain; and that his schooling, such as is suitable to his circumstances and condition in life, for the like period of time, will amount to fifty dollars more, while the entire yearly income, derivable from said estate, will not probably amount to more than three hundred and fifty dollars.

Your petitioner further represents, that in his opinion, it would not be judicious to sell either of the two slaves, which belong to his said ward, inasmuch as they are young and increasing in value, and are bringing in reasonable wages ;

and, that it would be best for the interest of his said ward to sell the vacant lot of ground located on the north side of Eslava street, in the city of Mobile, which is described as follows, viz: (*here insert description.*) Your petitioner thinks that said lot will sell for sufficient to make up the deficit in the said income of his ward.

Your petitioner respectfully suggests to your Honor, that said lot, being vacant, cannot be made the source of income without making improvements thereon, which, the value of the estate of his ward, will not justify.

In consideration of all which, your petitioner prays for an order and leave to sell said lot of land: That a day may be set for hearing the matter of this petition, and such proof as may be submitted in the premises; and that all such proceedings may be had and such orders and decrees made, as may be requisite to have said sale made in legal form.

And as in duty bound, &c.

JAQUELIN PENDLETON.

Subscribed and sworn to, &c.

[ No. 228. ]

PETITION of GUARDIAN for leave to REMOVE the person and property of  
WARD to another State.—Code § 2031.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Court of Probate  
for said County:

The petition of Orlando Singletree, the guardian, in said Court, of the person and estate of William Singletree, a minor, respectfully shows unto your Honor, that on the — day of —, 18—, he made a full settlement, with the Judge of said Court, of his accounts, as such guardian, as will appear by a reference to said accounts, now remaining on file, and by the decree of said Court thereon rendered and entered on the — day of —, 18—.



Your petitioner further represents, that he is also the guardian of his said ward by due appointment of the Surrogate's Court, a Court of competent jurisdiction in the premises, held in and for the City, County and State of New York. As evidence of such appointment, your petitioner herewith produces and files with your Honor, a transcript of the records of said Surrogate's Court, certified according to the act of Congress, showing said appointment, and that petitioner has executed the proper bond as such guardian. And your petitioner is ready to adduce testimony according to law and the rules of said Probate Court, at such time as your Honor may appoint, and that the sureties to such bond are sufficient.

Wherefore, your petitioner prays your Honor to make such orders and decrees as may be necessary in the premises to authorize him to remove the person and estate of his said ward to the said State of New York.\* And as in duty bound, &c.

ORLANDO SINGLETREE.

Subscribed and sworn to, &c.

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[ No. 229.]

ORDER authorizing GUARDIAN to REMOVE the PERSON and ESTATE of his WARD to another State.

*William Singletree, a minor. }*  
*Authority to remove. }*

18

This day came on to be heard the application of Orlando Singletree, the guardian, in this Court, of said minor, asking for authority to remove the person and estate of his said ward to the State of New York: And, it being shown to the Court, by due proof, that said guardian hath made a full settlement of his guardian accounts with this Court; and

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\* The petitions and orders in this case, and under § 2032 and 2033 of the Code, will furnish all the necessary precedents for use under § 2035.

said guardian having also produced, and filed with the Judge of this Court, a transcript, certified according to the act of Congress, of the records of the Surrogate's Court, held in and for the City, County and State of New York, that being a Court of competent jurisdiction in the premises in said State of New York, showing his appointment as such guardian by said Surrogate's Court, and the execution of a bond with surety, for the performance of the trust, in twice the value of the estate of said ward; and having also adduced testimony, showing, to the satisfaction of the Court, that the said sureties to such bond are sufficient: It is ordered, adjudged and decreed, that said Orlando Singletree be, and he is hereby authorized and empowered to remove the person and estate of his ward, William Singletree, to the State of New York; and that the said Orlando hereafter account, as guardian of the said William, to the proper Court in the State of New York: It is further ordered, that said application, and all writings on file, relating thereto, be recorded.

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[ No. 230. ]

PETITION by GUARDIAN for leave to REMOVE property of WARD out of the State when both Guardian and Ward are NON-RESIDENTS.—Code § 2032 and 2033.

To the Hon. Edwin Rust, Judge of the Court of Probate, in and for the County of Mobile :

Your petitioner, Orlando Singletree, respectfully produces, and now files herewith, for the inspection and judgment of your Honor, a transcript from the records of the Probate Court, a Court of competent jurisdiction in the premises, held in and for the County of Wayne, in the State of Indiana, certified in accordance with the requirements of the act of Congress, showing that he has been duly appointed by said Probate Court, in the State of Indiana,

guardian of William Singletree, a minor ; and that he has duly qualified as such guardian, according to the laws of Indiana, and has given bond, with surety, for the performance of his trust.

Your petitioner further represents, that his said ward and himself both reside in the State of Indiana ; and that his said ward is entitled to certain property in said county of Mobile, (*or, the principal part of which is in the county of Mobile,*) described as follows, viz : (*here insert description,*) which may be removed to another State without conflict with any restriction or limitation thereupon, and without impairing the right of said ward thereto.

*(If there is any resident executor, administrator or guardian, the fact, with the name and residence, should be here stated, in order that the ten days' notice may be given. If there is no such executor, administrator or guardian, the fact should be here briefly stated, for the satisfaction of the Court.)*

Your petitioner, therefore, prays your Honor to make such orders as may be requisite, so that he may have leave, as such guardian, to remove the said property of his said ward to the said State of Indiana. And as in duty bound, &c.

ORLANDO SINGLETREE.

Subscribed and sworn to, &c.

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[ No. 231. ]

DECREE authorizing NON-RESIDENT GUARDIAN of NON-RESIDENT WARD to REMOVE property in this State to the State where said Guardian and Ward both RESIDE.—Code § 2033.

*William Singletree, a non-resident minor. }  
As to removal of his property. }*

18

This being the day set to hear—(*or, if no notice is required*—This day came on to be heard)—the application of Orlando Singletree, which was heretofore filed by him in writing and under oath, praying for leave to remove certain property

of said minor, in said application described, to the State of Indiana ; and it being shown to the Court, by due proof, that said minor is entitled to property in this State, which (*or, the principal part of which*) is located in this county, and which is described as follows, viz : (*here insert description ;*) that said property may be removed to another State without conflict with any restriction or limitation thereupon, and without impairing the right of said minor thereto ; and that said applicant and said minor are both residents of the State of Indiana ; and the said Orlando having produced to, and filed in this Court a transcript from the records of the Probate Court of Wayne county, a Court of competent jurisdiction in the said State of Indiana, certified according to the act of Congress, showing that he has been appointed guardian of the said minor in said State of Indiana ; that he has duly qualified, as such guardian, according to the laws of said State of Indiana, and has given bond, with surety, for the performance of his trust. And it being also shown to the Court that A. B., the guardian, in this State, of said minor (*or any executor or administrator, as the case may be,*) has had due notice of this hearing of said application ten days before this day, (*the statement in the sentence, last preceding, will, of course, be omitted when there is no guardian, &c., and the statement part of the decree proceeded with as below, viz :*) and no good cause having been shown why the prayer of said petition should not now be granted : It is ordered and decreed, that leave be, and the same is hereby granted to the said Orlando Singletree to remove the said property of his said ward to the State of Indiana. It is further ordered, that all writings and papers pertaining to said application and this decree, be recorded.

[ No. 232. ]

PETITION of a SURETY in a GUARDIAN'S BOND to be DISCHARGED from his SURETYSHIP.—Code § 2019.

To the Hon. Edwin Rust, Judge of the Court of Probate for the County of Mobile :

The petition of A. B., respectfully represents unto your Honor, that he became bound, in the sum of ——— dollars, as the surety of C. D., in his bond as the guardian, in said Court, of E. F., a minor—which said bond bears date on the — day of —, 18—, and was approved by the Judge of said Court on the — day of —, 18—.

Your petitioner further represents, that he is unwilling longer to remain bound in said bond as such surety, and prays your Honor, that the proper proceedings may be had in order to effect his discharge at as early a day as possible.\* And as in duty bound, &c.

A. B.

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\* For the necessary directions as to the mode of proceeding under this petition, reference is here made to the series of forms commencing on page 164.

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As this is the last form which will be inserted under the head of what may properly be designated "Orphan's business" in the Probate Court, the author would remark, that the reason why the precedents, touching guardianship matters, are so few in number, is this: that, with the few exceptions, which are provided for in this connection, almost all necessary proceedings with regard to the guardian, his ward and the estate he holds, will be found to be sufficiently provided for in the course of the administration of an estate, which forms the principal feature in the preceding pages. To aid in the use of this work, the forms, occurring under the head of administration, which are applicable to guardianships, will be found to be properly referred to in the index.

[MOST OF THE FOLLOWING FORMS RELATE TO PROCEEDINGS IN THE PROBATE COURT, BUT ARE NOT NECESSARILY CONNECTED WITH PROBATE BUSINESS PROPER—SUCH AS THE ADMINISTRATION OF ESTATES, &c. IN THIS CONCLUDING PART OF THE WORK WILL, ALSO, BE FOUND SOME OF THE OFFICE FORMS, RELATING MORE ESPECIALLY TO THE CLERICAL DUTIES OF THE JUDGE:]

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[ No. 233. ]

**AN ASSIGNMENT of DOWER by the HEIR when the widow has subsequently married.**

This indenture, made the — day of —, 18—, between R. L., son and heir of O. L., late of —, of the one part, and N. H. and I., his wife, who was the widow and relict of the said O. L., of the other part.

Whereas, the said O. L. was in his lifetime and at the time of his death, seized in his demesne as of fee of, and in divers lands and tenements in —, in the county aforesaid, which upon the decease of the said O. L. descended unto the said R. L. Now, this indenture witnesseth, that the said R. L. hath endowed and assigned, and by these presents doth endow and assign unto the said N. H. and I. his wife, the third part of the said lands and tenements, to wit: All that messuage, &c. To have and to hold unto the said N. H. and I. his wife, for and during the natural life of the said I. by metes and bounds, in the name of dower, and in recompense and satisfaction of all the dower which the said I. ought to have of or in the said lands and tenements, which were of the said O. L., in —, aforesaid. In witness, &c.

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[ No. 234. ]

**APPEAL BOND.—Code § 1883 and § 3016.**

*State of Alabama,* }  
*Mobile County.* }

Know all men by these presents, that we, — — — — —  
 and — — — — —, are held and firmly bound unto — — — — —  
 — — — — —, his heirs, executors or administrators in the sum of

\_\_\_\_\_ dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these presents. Sealed with our seals, and dated this — day of —, A. D. 18—.

The condition of the above obligation is such, that whereas the above bounden ———, has this day applied for, and obtained an appeal, returnable to the — Term, 18— of the Supreme Court of Alabama, to supersede and reverse a judgment and decree rendered in the Probate Court of said Mobile county, on the — day of —, 18—.

*(Here insert the proper description of the judgment and decree appealed from, and the names of the parties.)*

Now, if the said ———, shall prosecute said appeal to effect, and shall pay and satisfy such judgment and decree, as the Supreme Court shall render in the premises, then this obligation is to be null and void, otherwise to be and remain in full force and effect.

In presence of	}	———, [L. S.]
		———, [L. S.]
		———, [L. S.]

[ No. 235. ]

CITATION upon an APPEAL.—Code § 3018.

<i>State of Alabama,</i>	}	Probate Court,
<i>Mobile County.</i>		

To the Sheriff of Mobile County—Greeting:

Whereas, on the — day of —, 18—, in a certain cause or matter of controversy in said Court, wherein a judgment and decree was rendered in favor of ——— against ———, to reverse which judgment and decree, the said ——— has on this day applied for and obtained from this office, an appeal, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the first Monday of — next, and the necessary bond having been given by the said ———, with ——— and ———, as sureties therein.

Now, you are hereby commanded, without delay, to cite the said ———, or ———, his Attorney, to appear at the next Term of our said Supreme Court, to defend against the said appeal, if they think proper.

Witness, Edwin Rust, Judge of the said Probate Court of said county, this — day of —, A. D. 18—.

Attest : ———, Judge.

[ No. 236. ]

PETITION for CONVEYANCE of land to be made by the PERSONAL REPRESENTATIVE, the decedent having agreed, in writing, to convey, and died without executing such conveyance.—See Code page 288.

*State of Alabama, }*  
*Mobile County. }*

To the Hon. Edwin Rust, Judge of the Court of Probate of said County :

The petition of Willis Longley respectfully sheweth unto your Honor, that John Jones is the administrator, in this county, and by due appointment and authority derived from said Court, upon the estate of Richard Rich, deceased : That the heirs of said deceased are his five children.—(*Set out the heirs according to the form used in the petition to sell lands to pay debts—page 115—and if any of them are minors and have guardians, name such guardian, and his place of residence.*)

Your petitioner further represents, that the said Rich, since deceased, in his lifetime, viz : on the — day of —, 18—, made, in writing, and duly executed and delivered an agreement or contract, which is now in full force, for the conveyance by him to petitioner, of certain lands in this State, a copy of which said agreement, containing a full description of said lands, is hereto attached, and which your petitioner prays may be taken and considered as part of this petition. Your petitioner further states, that said Rich departed this life without having fulfilled said agreement or contract, and without having executed any such conveyance as is contemplated and intended by the terms of said instrument of writing, although your petitioner says that said agreement or contract was fairly made, and that there remained no consideration to be paid or condition to be performed therefor, by him, or on his part. Petitioner further states, that since the decease of said Rich he has applied to



his personal representative, the said Jones, and requested him, in his said capacity of administrator of said estate, to execute a conveyance to petitioner in accordance with the terms of said written agreement, and of the laws of this State in such cases made and provided; and that said administrator has wholly failed and refused to comply with such, the just and lawful demand of your petitioner in the premises.

Your petitioner therefore prays, that said Jones may be cited to appear in this Court, at such time as shall be named by your Honor, and required to show cause, if any he has, why your Honor should not, by your decree, compel him to execute and deliver the proper conveyance, according to said instrument of writing, and in conformity with the Code of this State in such cases made. And as in duty bound, &c.

WILLIS LONGLEY.

Subscribed and sworn to, &c.

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[ No. 237. ]

Order SETTING day to hear PETITION that Administrator make TITLE to LAND according to contract of deceased, in his LIFETIME.

*Richard Rich, deceased, Estate of.* }  
*In the matter of the petition of Willis Longley.* }

This day comes Willis Longley, and files his application in writing, verified by oath, setting forth, among other things, that said decedent, in his lifetime, entered into a *bona fide* contract in writing, and for a valuable consideration, to convey certain lands to said Longley, which lands are located in this State, and particularly described in said application; and which contract is alleged now to be unexecuted and in full force: It is further stated in said application, that John Jones, the personal representative of said decedent, he being the administrator of his said estate in this Court, has refused to execute such conveyance, though he has been properly applied to for that purpose. Wherefore, said applicant prays, the interference of this Court, to compel said Jones to execute such conveyance, and so that said written contract of said decedent, executed,

in his lifetime, as aforesaid, may be made good and effective for its intended purpose: It is, therefore, ordered by the Court, that said petition be set down for a hearing on the — day of —, 18—, and that notice of said petition, together with the said day above set for hearing the same, be given, by publication, for six successive weeks before said day, in the *Mobile Daily Register*, a newspaper published in this county. It is further ordered, that said Jones have notice of said petition, and of the said day set for hearing the same, by citation, to be personally served upon him at least ten days before said petition shall be heard.

*(As to the form of entry where there are heirs who are minors, non compos mentis, non-residents, &c., see first order upon the petition of an administrator or executor to sell lands to pay debts—page 118. For a suitable form for appointing guardian ad litem, see form of such appointment used with reference to the Probate of a will, or the sale of lands—pages 29 and 120. It will be seen that the appointment of a guardian ad litem, is intended to be made after service and publication, as in Chancery.)*

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[ No. 238. ]

ANSWER of PERSONAL REPRESENTATIVE to Petition of third party that he be COMPELLED to MAKE TITLE to LAND under a contract of decedent made in his lifetime.

*State of Alabama, }*  
*Mobile County. }*

To the Honorable Edwin Rust, Judge of Probate in and for said County :

John Jones, the administrator and personal representative of Richard Rich, deceased, duly appointed and qualified in this Court, and who has been cited to make answer to the petition of Willis Longley, filed against him in this Court, praying that this respondent may be required to make and deliver to him, said Longley, a conveyance of the lands in said petition described, in accordance with the terms and conditions of a certain writing, which is set up by said petitioner, as the genuine contract or agreement of

said deceased, made in his lifetime, for answer to said petition, or to so much thereof as he is advised it is necessary that he should answer; says, he admits that said supposed contract was signed by his intestate in his lifetime, but alleges that, after said instrument was so signed, it was placed in the hands of A. B., as an escrow, and to be held by him until said Longley should pay the sum of money mentioned in the body of said writing, and as the consideration thereof; which said consideration money was never paid. And so this respondent says that said instrument, though signed by said intestate, was never delivered to said petitioner as the *bona fide* contract or agreement of said decedent, but that the said Longley became possessed of the same by some unfair and improper means.

This respondent, therefore, denies that said writing is the *bona fide* contract or agreement of his intestate, and prays to be discharged from making farther answer to said petition; and that said petition may be dismissed at the cost of the said Longley.

JOHN JONES, Admr.

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[ No. 239.]

Order that Administrator make CONVEYANCE of LAND agreed to be conveyed by decedent, in his lifetime.

<i>Richard Rich, deceased, Estate of.</i>	}	18
<i>In the matter of the petition of Willis Longley.</i>		

This being the day duly set, by the order of this Court, entered in the premises, on the — day of —, 18—, for hearing the petition of Willis Longley, praying that John Jones, as the administrator of said estate, may be compelled to make titles to him, the said Longley, to the lands described as follows, to wit: (*Here describe the land according to the petition*) upon the ground that said decedent had, for a valuable consideration, and by a writing, duly executed and delivered by him in his lifetime, contracted and agreed to convey the same to said Longley, but had died without having performed said contract; now comes the said Longley, and moves the Court that his said petition, and the proof to be made, may be heard, and that his said prayer may be granted; and also comes the said administrator, (*or, if he*

*does not appear, proceed thus:* and it being shown to the Court, by satisfactory evidence, that said administrator has been duly notified, in all respects in accordance with the former order of the Court, entered in the premises on the — day of —, 18—;\*) and thereupon, the Court proceeds to hear the matter of said petition, and the answer of said Jones thereto: Whereupon, it appears to the satisfaction of the Court, from the proof submitted, that said Richard Rich, since deceased, entered into a *bona fide* contract in writing, which was duly executed in his lifetime, in and by which, for a valuable consideration, he agreed to convey, by deed of quit-claim, to the said Longley, the lands aforesaid, and which said contract is still unexecuted and now remains in full force and virtue; and the Court, therefore, being fully of opinion that said contract should be specifically performed and executed according to the true intent and purposes thereof: It is ordered, adjudged and decreed by the Court, that the said John Jones, as the administrator of the said estate, do, within a period of thirty days from this day, make, execute and deliver a quit-claim deed of said land, to said Willis Longley, in such manner and form as is required by the terms of said contract.† It is further ordered, that all papers and written evidences on file, relating to this proceeding, be recorded. It is further ordered, that said John Jones do pay the costs of this proceeding.

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[ No. 240. ]

Application for PARTITION of LAND between adult owners under the provisions of the Code.—See § 2677, et seq.

*State of Alabama,* }  
*Mobile County.* } Probate Court of said County.

To the Hon. Edwin Rust, Judge of said Court:

The petition of John Optimus, respectfully sheweth unto your Honor, that a certain piece of land lying in the county of Mobile, about five miles south of the city of Mobile,

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\* In case there are minors interested, and who have been made parties, as required by § 1348, of the Code, proceed here, with reference to such minors, in the same manner as in the final order for the sale of land by executors and administrators—which see, page 121.

† If an attachment, to compel conveyance, should become necessary, a sufficient guide, for the proceeding, will be found by consulting the mode adopted to compel the production of a will which is withheld—pages 19 and 20.

fronting on the Bay of Mobile, and adjoining what is known as Catfish Hotel, having a front, on said Bay, of one hundred and thirty feet—more particularly set forth on a map recorded in the office of this Court, in book No. 7, N. S., at page 348, and being the lot designated by the number one, on said map, as the property of Sylvester Nicholas, Augustus Rivers, James F. Hotchkiss, and petitioner.

Your petitioner further shows, that the property mentioned, and set forth in said map, as lots number one, two, three, four, five, six and seven, together with the lot designated on said map as Catfish Hotel, formerly belonged jointly, and in equal proportions, to the parties aforesaid, and to John Neels, William Cuttle and Lewis A. Reubens, and that all of the aforesaid present and former owners are residents of this county, and are all of full age. Petitioner further shows, that by an agreement between the said present and former owners of said property, designated in said map, the said Catfish property was sold and conveyed to Mrs. Sarah Barnes, and the balance of said property was divided into said seven lots by a surveyor, to be appointed, by lot, among the said seven owners thereof. Petitioner further shows, that by an agreement between said seven owners, the share of said Neels was purchased from him, by the other six owners thereof, the purchase thereof being equally divided and owned by and between said six. Petitioner further shows, that in the allotment of said property according to said map, the lot in said map numbered six fell to said Nicholas, the one numbered seven fell to said Hotchkiss, and the said lots numbered two, three, four and five fell to the shares of said Cuttle, Rivers, Reubens and petitioner—one of said lots to each—and the said lot numbered one fell to the share so purchased of said Neels. Petitioner further shows, that he is now, by purchase, the sole owner of said lots numbered two, three, four and five, and that he is the owner of three shares ( $\frac{3}{6}$ ) of the said lot numbered one, having added to his own by purchasing the interests of said Reubens and said Cuttle.

In consideration of which, your petitioner prays, that the said lot numbered one, on said map, may be partitioned between him and said Rivers, Hotchkiss and Nicholas; that said lot may be duly divided into six parts, representing the shares of petitioner, and of said Reubens and Cuttle, which

are now held by petitioner as aforesaid and said Rivers, Hotchkiss and Nicholas, so that in the final partition thereof, said Rivers, Hotchkiss and Nicholas may each receive a share equal to one-sixth thereof, and your petitioner, three shares, equal to three-sixths thereof. And so your petitioner prays, that your Honor will make all such orders in the premises as may be necessary to consummate said partition in accordance with this, his petition, and with the provision of law in such cases made. And your petitioner as in duty bound, &c.

JOHN OPTIMUS.

Subscribed and sworn to, &c.

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[ No. 241. ]

Order NOMINATING COMMISSIONERS to make PARTITION.

*John Optimus.* }  
*Petition for partition.* } Probate Court, Mobile County, 18

This day came John Optimus and filed his petition, praying for the appointment of Commissioners to make partition between him, said petitioner, and Sylvester Nicholas, Augustus Rivers, and James F. Hotchkiss, giving to petitioner three-sixths, and to said Rivers, Nicholas and Hotchkiss each one-sixth of the lot of land described as follows, to wit: (*Here insert description.*)

Whereupon, the Court doth order, in the premises, that Cornelius Koyle, John E. Fish and William B. Lake, be, and they are hereby nominated to act as Commissioners, to divide and make partition of said land among the parties aforesaid. It is further ordered, that publication be made weekly, from and after this day, until the — day of —, 18—, that being more than sixty days hence—in the Mobile Daily Register,\* a newspaper published in this county,

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\* PUBLICATION UNDER THIS ORDER:

*State of Alabama,* }  
*Mobile County.* } Whereas, John Optimus has this day filed with me, his petition in writing, setting forth that he, together with Sylvester Nicholas, Augustus Rivers and James F. Hotchkiss, all of whom are citizens of this county, and of full age, are jointly interested in certain lands located in this county, that is to say, that the said Optimus is entitled to three parts or three-sixths, and the other parties in interest to one part or one-sixth each, which said land is described as follows, viz: (*place for description of*

particularly describing said land, showing the number of shares into which it is proposed to divide it, and amongst whom, setting forth their names and places of abode, as also the said application, and by whom the same is made, and giving further notice, in said publication, that on the said — day of —, 18—, the Judge of this Court will appoint the three persons above named, as Commissioners, to make such division of said land, unless valid objections be made to the appointment of said nominees, or to some of them. It is further ordered, that notice of said application and of said day set for appointing said Commissioners, be given to ——— and ———, who reside in this county, to be personally served on them at least five days before said day so set, for them to show cause and make such defence in the premises as the protection of their several interests may require, and as may be agreeable to law in such cases.†

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land;) and praying that said land may be divided into six equal parts, and allotted to the said Optimus and the aforesaid three persons, according to their said respective shares: Now, therefore, all persons in interest are hereby notified, that on the — day of — next, I shall appoint and commission Cornelius Koyle, John E. Fish and William B. Lake, to make division of said land, according to the prayer of said petition, unless good cause is shown why said persons should not be so commissioned.

EDWIN RUST, Judge.

†The statutory provisions, under which this proceeding is had, do not require that the persons who are jointly interested with the applicant should be cited, or, indeed, have any notice at all, other than that afforded by the precarious chance that the advertisement may fall under the eye of some of them; but, as this proceeding has been made by the Code, purely judicial in its character, to be carried forward under the eye of the Court, and is to be *prima facie* binding upon the parties, and not an extra-judicial matter, which is conducted by the Judge, at Chambers, and upon slips of paper, it would seem unjust that the rights of persons should be thus passed upon, without the party interested having his day in Court, if he chose to avail himself of it. Believing that the absence of a provision for such notice is a *casus omissus* in our law, and that justice requires that such a notice as is contemplated in the order should be given to all parties resident in the State, the author has inserted the order. There can be no doubt of the power of a Court, charged with the execution of a statute which provides no mode for bringing parties before it, to adopt such rules and process as may, in its judgment, be best calculated to do justice to all concerned, and most likely to thoroughly effect the objects of the law—so long as such rules and process are in aid of, and in no way in contravention of the letter or spirit of the act in question.

[ No. 242. ]

Order CONFIRMING APPOINTMENT of COMMISSIONERS to make PARTITION of LAND under the Code.—See § 2677, et seq.

*John Optimus.* } Probate Court, Mobile County, 18  
*Petition for partition.* }

Whereas, heretofore, to wit : on the — day of —, A. D. 18—, Cornelius Koyle, John E. Fish and William B. Lake, were nominated as Commissioners to divide a certain tract of land situated in the county of Mobile, and State of Alabama, which is particularly described in said former order; and due publication having been made as required by law, and in strict accordance with said former order, in the Mobile Daily Register, a newspaper published in this county; and no valid objection having been heretofore, and none now being made to the said nomination. Now, on this day, it is ordered, that the aforesaid nomination of the said Cornelius Koyle, John E. Fish and William B. Lake, be, and the same is now confirmed, and they are hereby appointed Commissioners, and as such Commissioners, they are hereby authorized to lay off and to make division of said land between the said John Optimus, Sylvester Nicholas, Augustus Rivers and James F. Hotchkiss, according to their respective shares and interest, as the same are stated in said former order, and as the same appear from the evidence on file, and the shares, so set off and allotted to each of said parties in interest, to designate by metes and bounds. It is further ordered, that a commission do forthwith issue to said Commissioners, in accordance with the law in such cases made.

[ No. 243. ]

Form of COMMISSION to PARTITION LAND under § 2677, et seq., of the Code.

*State of Alabama,* } Probate Court.  
*Mobile County.* }

To Cornelius Koyle, John E. Fish and William B. Lake—  
 Greeting :

Whereas, John Optimus, of the county and State aforesaid, who claims to own in fee simple, in common with Augustus Rivers, James F. Hotchkiss and Sylvester Nicholas,



all of whom are residents of the county and State aforesaid, that certain piece of land, (*Here insert description ;*) and whereas, you, and each of you, were heretofore duly nominated by the Judge of Probate of said county, to be Commissioners to make partition of said land, and no one having appeared or made any objections to said nomination :

Now, know ye, that by virtue of the power vested in me, I have appointed you Commissioners to divide the said above described land into six equal parts or shares, having a due regard, in the partition thereof, to the quality of the soil and other advantages, so as to make the different shares as nearly equal in value as practicable.

You are further commanded, that, of the six parts or shares, so made, you allot to said Rivers, Hotchkiss and Nicholas, one part or share each, and that you allot to said Optimus the remaining three parts or shares. And this you are commanded to do with all convenient speed, so that you may have this, your commission, with a due return of your action thereon, in the premises, before me at my office, on or before the second Monday of —, 18—, that being the tenth day of said month.

Given under my hand and seal, this the — day of —, 18—, at office, in the city of Mobile.

EDWIN RUST, [L. S.]

Judge of Probate Court, M. C.

[ NO. 244. ]

RETURN of COMMISSIONERS, showing how they have made PARTITION.  
—Code § 2677.

*State of Alabama,* }  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of the Court of Probate  
for said County :

Cornelius Koyle, John E. Fish and William B. Lake, who were appointed by your Honor, Commissioners to make partition into six parts or shares, of a certain lot of land, lying in the county and State aforesaid, between John Optimus, Augustus Rivers, James F. Hotchkiss and Sylvester

Nicholas, which lot of land is described as follows, to wit : (*Here insert description of land :*) Beg leave to report that, after having been so appointed as Commissioners, and duly sworn by your Honor, faithfully to execute the said trust reposed in us ; and after having personally surveyed the said lot of land, we proceeded to divide the same into six parts or shares, having regard to the soil and other advantages so as to make the different shares as nearly equal in value as practicable. And we then numbered the said lots, so divided ; and made a diagram or plat of the same, which diagram is hereto annexed and made a part of this report. We further report, that we gave notice by publication, a copy of which notice is herewith submitted and filed, in a newspaper published in said county, that on the — day of —, A. D. 18—, at twelve o'clock M., we would attend at the Court house of said county, to make division of said land according to law ; and that on the said day, so appointed and advertised by us, we did proceed, in the manner pointed out by law, in a public manner, at the time and place appointed, and in the presence of your Honor, to determine by lot to whom each of said pieces, lots or shares should belong ; and that, according as was determined by said lot or chance, we divided and set apart to the said John Optimus, the lots numbered one, two and five, on said diagram or plat of the land to be divided : The said lot, number one, being the southern portion of the original lot, and immediately north and adjoining what is known as Cat-fish Hotel, with a front on the Bay of Mobile of thirty-two  $\frac{4}{12}$  feet, as aforesaid, with the depth of the original lot ; said lot number two having the same dimensions as lot numbered one, and lying next north of the same, and the said lot number five, with the same dimensions, and bounded south by lot numbered four, and north by lot number six ; to the said Augustus Rivers, the lot numbered three on said diagram or plat, having the same dimensions, and bounded south by lot number two and north by lot number four ; to the said James F. Hotchkiss, the lot numbered four on said diagram or plat, having the same dimensions, and bounded south by lot number three, and north by lot number five ; and to the said Sylvester Nicholas, the lot numbered six on said diagram or plat, with the same dimensions, and bounded south by lot number five, and north by lot number two of the map referred to in book No. 7, N. S. page 348, and being the

north part or portion of the said lot of land, so divided, as by reference to said diagram or plat will fully appear. And we estimate the said six parts or shares to be as nearly of equal value as it is practicable to make them in this division.

Mobile, October —, 18—.

Attest :	}	CORNELIUS KOYLE,	} Com.
EDWIN RUST,		JOHN E. FISH,	
Judge of Probate, M. C.		WILLIAM B. LAKE,	

[ No. 245. ]

Order to RECORD proceedings, &c., had upon PARTITION of LAND.  
—Code § 2684.

<i>John Optimus, Sylvester Nicholas,</i>	} Probate Court, 18.
<i>Augustus Rivers, James F. Hotchkiss.</i>	
<i>As to partition of land.</i>	

Cornelius Koyle, John E. Fish and William B. Lake, the Commissioners who were appointed by this Court, and in writing, duly commissioned by the Judge thereof, on the — day of —, 18—, to divide and partition between the said parties, certain lands which are fully described in the application for the partition thereof, which was filed by the said John Optimus, as, also, in the order and decree of this Court, rendered in the premises, on the — day of —, 18—, having made and signed a statement in writing, which is attested by the Judge of this Court, showing the result of the proceeding, which was duly had in the presence of said Judge, under and in pursuance of said commission, to determine, by lot, to whom each of the several parcels into which said land was laid off, in order to make such partition, should belong, and setting forth to whom the said several parcels or lots were so allotted, together with all the facts relating to such division and allotment; and said statement, being deemed by the Court full and accurate, and the same having been returned into Court for a length of time, which is adjudged to be reasonable and sufficient, for the parties in interest to except or object to the said proceedings of said Commissioners in this behalf, and to the said return thereof, if reasonable grounds of exception or objection exist; and no such exception or objection having been taken or

made: It is ordered and decreed by the Court, that said petition, commission, statement of the Commissioners, map and plat, and all orders made in this proceeding, be filed in the office of the Judge of this Court, and that the same be recorded in the book kept by him for the registry of conveyances of land.\*

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[ No. 246. ]

PETITION to SELL LAND for DIVISION among several OWNERS, where same cannot be equitably PARTITIONED and DIVIDED.—See Code § 2677, et seq., pamphlet act 1853-'4, p. 72, and 1855-'6, p. 20.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

To the Hon. Edwin Rust, Judge of said Court :

The petition of John Wenter, who is of full age and resident of said county, respectfully represents unto your Honor, that he and Artemus Bagley, Henry Collins and Israel Pike, on the — day of —, 18—, became the joint owners of the following described real estate, situated in this county, to wit : (*Here insert description of land ;*) that on the — day of —, 18—, they also became the joint owners of thirteen slaves, viz : (*Here insert description of*

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\* By looking at the tenth subdivision of section 670 of the Code, it will be seen that "Courts of Probate" \* \* \* "have original jurisdiction of" \* \* \* "the partition of land within their counties," and by reference to sections 672 and 674, it will be found that no such matter is comprehended within the list of what "Judges of Probate have authority" to do, and that questions of partition make no part of "the duty of the Judges of Probate." The enlarged jurisdiction conferred by the acts of 1853-'4, pamphlet acts page 72, and of 1855-'6, page 20, amendatory of section 2677 of the Code, is of such a character that it ought not to be exercised in any other mode than such as is prescribed in the conduct of matters in open Court. It is indisputable, therefore, that the *Court*, and not the *Judge*, is the proper forum for the disposal of these matters of partition. It is evident, then, that what is done under section 2677, by the Judge, is required to be done by him in his capacity of a Court, and while holding Court. All proceedings by a Court, should, undoubtedly, be shown by a record entry of what is done, or ordered, to be duly spread upon the book of minutes which is required to be kept for that express purpose by every Court of record.

These remarks are made here in order to show the *necessity*, aside from the eminent propriety there is of causing an appropriate entry to be made at every step in effecting the partition of land under our statute. It is more orderly, all will admit. It is equally clear that error and wrong to parties are less likely to mar the result when each move is thus carefully made. The examination of titles is facilitated and made more certain and satisfactory.

*slaves, name, age, sex, etc., etc.*;) that afterwards, and while the said property was so held and owned, the said Henry Collins and Israel Pike departed this life; that the estate of the said Henry Collins, is now in due course of administration in your Honorable Court, letters testamentary upon his last will and testament having been granted to John Rigsby; that the legal title of the said Collins, deceased, in and to his said interest in all of said property, is vested in said Rigsby, by virtue of said will, until the estate of said Collins shall be finally distributed; that the estate of the said Israel Pike has been finally settled and distributed among his five children, viz: Mary Holsten, formerly Mary Pike, now wife of George Holston, residing at Nashville, Tennessee; Charles Pike, who is of full age, residing in Baltimore, State of Maryland; Edward Pike, a minor over the age of fourteen years, residing in this county, and who has no guardian; Augustus Pike, a minor under the age of fourteen years, residing with his guardian, Tully Stewart, in Wilcox county, in this State; and Lorenzo Pike, who is of full age but supposed to be of an unsound mind, and who resides in this county, with Dr. Octave Medicus. (Petitioner states, however, that no judicial inquiry has been had as to the mental competency of said Lorenzo.) That the said Artemus Bagley, who is of full age, resides in this county; that said property cannot be equitably partitioned or divided without a sale of the same; and that it would be to the interest of all of said parties to sell the said property for the purpose of partition and division.

Your petitioner, therefore, respectfully prays your Honor to decree the said property to be sold, and to make and issue all such orders as may be necessary to effect the sale thereof, for the purpose of such division and partition. And as in duty, &c.

JOHN WENTER.

Subscribed and sworn to, &c.

[ No. 247. ]

ORDER setting day to HEAR the foregoing APPLICATION. .

*In the matter of the petition or application of* } Probate Court,  
*John Wenter, for the sale of certain real and* } Mobile County,  
*personal property for partition or division.* } 18—.

This day came the said John Wenter and filed his application, in writing and under oath, setting forth, among other matters, that he resides in this county and is of full age; that he and Artemus Bagley, Henry Collins and Israel Pike, on the — day of —, 18—, became the joint owners of certain real estate situated in this county, which is particularly described in said application; that on the — day of —, 18—, they also became the joint owners of thirteen slaves, who are mentioned and particularly described in said application; that afterwards, and while the said property was so held and owned, the said Henry Collins and Israel Pike departed this life; that the estate of the said Henry Collins is now in due course of administration in this Court, letters testamentary upon his late will and testament having been granted to John Rigsby, who is, by the will of said testator vested with the legal title to the property now in question; that the estate of the said Israel Pike has been finally settled and distributed among his five children, viz: Mary Holston, formerly Mary Pike, now wife of George Holston, residing at Nashville, Tennessee; Charles Pike, who is of full age, and residing at Baltimore, State of Maryland; Edward Pike, a minor, over the age of fourteen years, and residing in this county, and who has no guardian; Augustus Pike, a minor, under the age of fourteen years, residing with his guardian, Tully Stewart, in Wilcox county, in this State; and Lorenzo Pike, who is of full age, and residing in this county, with Dr. Octave Medicus; and, also, alleging that the said Lorenzo is supposed to be of unsound mind, though no judicial inquiry has been had as to his mental competency; that the said Artemus Bagley, who is of full age, resides in this county; that said property cannot be equitably partitioned or divided without a sale of the same; and that it would be to the interest of all of said parties to sell the said property for the purpose of partition and division; and praying this Court, to decree the said property to be sold, and to make and issue all such orders as may be necessary to effect the

sale thereof, for such purpose; whereupon: It is ordered, that the — day of —, 18—, be appointed a day for the hearing of said application;\* that such of said parties as are residents of this State, have notice of the time and place set for the hearing of said application, by citation,† to be served on them personally, at least ten days before such hearing shall be had; the citation for the said Augustus Pike, to be served on Tully Stewart, his said guardian, and the citation for the said Lorenzo Pike, to be served on the said Dr. Octave Medicus, as well as on the said Lorenzo personally; and that notice of the same, be, also given, by publication, to be continued weekly, until said day of hearing, in the *Mobile Daily Register*, a newspaper published in this county; and further, that a newspaper containing such notice, with black lines drawn around the notice, be sent by mail, post paid, to each of the said parties residing without this State.

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[ No. 248. ]

Form of NOTICE by PUBLICATION to be given under the preceding order.

*State of Alabama,* } Probate Court, 18  
*Mobile County.* }

*In the matter of the application of John Wenter, for the sale of certain real and personal property for partition and division.* }

The said John Wenter, having this day filed, in said Court, his petition or application in writing, alleging that he, and Artemus Bagley, John Rigsby as executor of the will of Henry Collins, deceased, and the children of Israel Pike, deceased, are the joint owners of certain real and personal property described in said petition; and that said

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\* From the language of sections three and four, of the act under which this proceeding is had, it may be doubtful what length of notice should be given. To avoid all question, it would be well, therefore, to set the hearing for a time not less than forty days ahead.—See pamphlet acts 1854-'5, page 55, for the act regulating the sale of real and personal property by executors, &c., and also the Code § 1867, et seq.

† The citation in this proceeding would be, "to show cause, if any there be, why the petition of John Wenter, this day filed in said Court, for a decree or order of sale of certain real and personal property—in which they are represented as being interested—should not be granted, for the purpose of partition and division."

property cannot be equitably partitioned or divided, without a sale thereof: The — day of —, 18—, was appointed a day for the hearing of the same; and, inasmuch as it appears that a portion of the parties who are represented as being interested in the said property, reside without this State: It is, therefore, ordered, that notice of said petition, and of the time and place set for hearing the same, be given by publication, to be continued weekly, for three successive weeks, in the *Mobile Daily Register*, a newspaper published in this county.

EDWIN RUST, Judge.

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[ No. 249. ]

ORDER appointing GUARDIAN AD LITEM for the MINORS, on proceeding to SELL under the act last named.

*In the matter of the petition or application of* } Probate Court,  
*John Wenter, for the sale of certain real and* } Mobile County,  
*personal property for partition or division.* } 18—.

It being known to the Court, that due notice of the time and place set for the hearing of said petition or application, has been given to Edward Pike, a minor, over the age of fourteen years; to Augustus Pike, a minor, under the age of fourteen years, by service upon Tully Stewart, his guardian; and to Lorenzo Pike, who is believed to be a person of unsound mind, and also by service upon Dr. O. Medicus, in whose care and custody the said Lorenzo now is; and none of the said persons, nor any person in behalf of any of them, having nominated to the Court a suitable person, as guardian *ad litem*, to represent and protect their interests in the matter of said petition or application: It is, therefore, now ordered, that James Boylin, who is deemed by the Court, a fit and proper person, and who is not of kin to said petitioner or applicant, nor in any way interested in this proceeding, be appointed such guardian *ad litem*; and that he have notice of this appointment.\*

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\* The guardian *ad litem* should file his answer to the application, in writing, denying the allegations in the petition; and he should, also, be served with a copy of interrogatories upon which the testimony is to be taken, and should cross-interrogate the witnesses.



[ No. 250. ]

DECREE of SALE and that Commission issue under the act last named.

*In the matter of the petition or application of* } Probate Court,  
*John Wenter, for the sale of certain real and* } Mobile County,  
*personal property for partition and division.* } 18—.

This day having been regularly appointed, more than forty days since, by the Judge of this Court, for the hearing of the said petition or application: now comes the said John Wenter, and moves the Court for an order of sale, in accordance with said petition, of the following described real estate, situated in this county, to wit: (*here insert description of land*;) and also the following named slaves, viz: (*here insert description of slaves, &c.,*) upon the ground that the same cannot be equitably partitioned or divided without a sale of the same; and, also, comes James Boylin, heretofore appointed by this Court, to be the guardian *ad litem*, for Edward Pike and Augustus Pike, minors, and Lorenzo Pike, who is believed to be a person of unsound mind, to represent and protect their interests in the matter of said application, and who has duly filed his answer in writing, as such guardian, denying the allegations contained in said petition or application; and it appearing that due notice of the time and place set for the hearing of said petition, has been given to all parties in interest, in pursuance of law, and in all respects as directed by the order of this Court, made and entered in the premises, on the — day of —, 18—, and it now being proved to the satisfaction of the Court, by the testimony of Caleb Knox and Palmer Jay, who are disinterested witnesses in this behalf, and whose testimony has been taken upon direct and cross interrogatories, by deposition, as in Chancery cases, and filed of record in this proceeding, that the said property cannot be equitably partitioned and divided among all the parties in interest, and that it would be to the interest of all said parties to sell the same, for the purpose of partition and division: It is, therefore, ordered, adjudged and decreed, that the said petition or application be granted, and that the said property hereinbefore described, be sold for the purpose of partition and division among the parties interested therein; and, to effect such sale and division: It is ordered, that John Smith, James Conroy, Allen Mason, Joseph High and Christopher Merdoch, who are deemed by this Court, suitable persons, be

appointed Commissioners, to whom a commission shall be addressed and issued, containing the names of all the said parties entitled to share in such division, together with the quantity of the interest of each, as, also, a description of said property, directing them to sell the said property for cash; to the highest bidder, at public auction in front of the Court house of this county, after first giving at least thirty days notice of the time, place and terms of sale, together with a description of said property, by advertisement, to be inserted in the Mobile Daily Register, a newspaper published in this county; and further, that said Commissioners be directed to make return to this Court, in writing and under oath, of their proceedings in this behalf, within sixty days after said sale. It is further ordered, that said commissioners do retain the proceeds of said sale, until such sale shall be duly confirmed, and until the further order of Court.

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[ No. 251. ]

COMMISSION under the act last named.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

To John Smith, James Conroy, Allen Mason, Joseph High and Christopher Merdoch—Greeting:

Whereas, in and by a decree of the Judge of said Court, rendered on the — day of —, 18—, you were appointed by said Judge, Commissioners to sell the following described real estate, situated in this county, to wit: (*Here insert description of land,*) and also the following named slaves, to wit: (*Here insert description of slaves, name age, sex, etc., etc.;*) which property is held and owned jointly, equally, and in common, by John Wenter, Artemus Bagley and the estate of Henry Collins, deceased, of which John Rigsby is the legal representative, and the heirs at law of Israel Pike, deceased, who are entitled to the share of the said Israel, to be divided between them equally, viz: Mary Holston, formerly Mary Pike, wife of George Holston, Charles Pike, Edward Pike, Augustus Pike and Lorenzo Pike:

Now, therefore, you are hereby directed, in pursuance of said decree, and the statute in such case made and provided, to sell the above described real and personal property, to

the highest bidder, for cash, at public auction in front of the Court house of this county, for the purpose of making an equitable partition and division between the said joint owners, after first giving at least thirty days notice of the time, place and terms of sale, together with a description of said property, by advertisement, to be inserted in the Mobile Daily Register, a newspaper published in this county.

And you are hereby further directed, to make return to said Court, in writing and under oath, of your proceedings in this behalf, within sixty days after said sale. You are further directed to retain the proceeds of said sale, until such sale shall be duly confirmed, and until the further order of Court.

Witness, Edwin Rust, Judge of said Court, at office, in the city of Mobile, this the — day of —, 18—.

EDWIN RUST, Judge.

[ No. 252. ]

#### NOTICE of COMMISSIONERS SALE.

In pursuance of, and in accordance with the terms and directions of a commission, issued and addressed to the undersigned, by the Hon. Edwin Rust, Judge of the Court of Probate, in and for Mobile county, bearing date the — day of —, 18—, we will proceed to sell to the highest bidder, for cash, at public auction in front of the Court house of said county, on Monday, the — day of —, 18—, at twelve o'clock M., all the real and personal property, which is described as follows, to wit: (*Here describe the lands,*) also the following slaves, viz: (*Here describe slaves, &c.;*) which said land and slaves are to be sold under the decree of said Court, for the purpose of a division between and among the several owners thereof, who are as follows, viz: (*Here describe the parties interested, the same as in the commission and decree.*)

JOHN SMITH,	} Com.
JAMES CONROY,	
ALLEN MASON,	
JOSEPH HIGH,	
CHRISTOPHER MERDOCH,	

[ No. 253. ]

## REPORT of SALE by COMMISSIONERS.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

To the Hon. Edwin Rust, Judge of said Court :

The undersigned, the Commissioners heretofore appointed by your Honor, to sell certain real and personal property, which is particularly set forth and described in the commission, which was issued and addressed to the undersigned by your Honor, on the — day of —, 18—, and which commission is hereto annexed, and referred to as a part of this report : Respectfully report and represent unto your Honor, that in pursuance of, and in strict accordance with the directions of said commission, and the statute in such case made and provided, they did, on Monday, the — day of —, 18—, at twelve o'clock, M., sell at public auction, in front of the Court house of this county, the property described in said commission, to James Huon, who was the highest and best bidder for the same, for the sum of ——— dollars, that being the highest amount bid at said sale : that said sale was in all respects fairly made, conducted and concluded ; that said property sold for an amount equal to its value ; and that said Huon has complied with the terms of said sale, by the payment to the undersigned, of the whole of said purchase money, in cash, which money, being the proceeds of said sale, is held in the hands of the undersigned, as directed by said commission, for the purpose of being distributed among the parties interested, who are named in said commission, according to law and the orders of this Court.

And said Commissioners having fully complied with the directions of said commission, beg leave to submit the foregoing, to the judgment and further order of your Honor, as the report of their action in the premises. The undersigned pray that they may have a reasonable allowance made to them for their services in the premises, and that they may be ordered to divide said fund according to law.

Subscribed and sworn to }  
 by each of said Com- }  
 missioners, this — day }  
 of —, 18—. }

EDWIN RUST, Judge. }

JOHN SMITH,  
 JAMES CONROY,  
 ALLEN MASON,  
 JOSEPH HIGH,  
 CHRISTOPHER MERDOCH.

[ No. 254. ]

ORDER CONFIRMING SALE of COMMISSIONERS, and as to the proceeds of sale.

*In the matter of the petition or application of,* } Probate Court,  
*John Wenter, for the sale of certain real and* } Mobile County,  
*personal property for partition or division.* } 18—.

This day came John Smith, James Conroy, Allen Mason, Joseph High and Christopher Merdoch, the Commissioners appointed by the Judge of this Court, on the — day of —, 18—, to sell certain real and personal property, which is particularly set forth and described in the decree of said Judge, entered in the premises on the — day of —, 18—, and filed their report, in writing and under oath, showing their action and proceedings in the premises. And the said report having been examined by the Judge of this Court, and no valid objection or exception thereto having been made or filed: It is ordered, that the same be in all things approved, ratified and confirmed. It is further ordered, that said report, together with the commission, issued and addressed to said Commissioners, be recorded as a part of this decree; and the said commission and report being read, are as follows, to wit: (*Here insert a full copy of the commission and report.*) It is further ordered, that proper conveyance and titles be made by the said Commissioners to the said James Huon, the purchaser of said property, conveying to him all the right, title and interest of the said owners, in and to the said property; and said Commissioners having, as directed by said commission, brought the proceeds of said sale, amounting to the sum of ——— dollars, into this Court; and it now appearing that the costs and expenses of this proceeding, including Judge's fees, charge for advertising, fee of guardian *ad litem*, and allowances to said Commissioners and auctioneers charges for making said sale, amounts to the sum of ——— dollars, which sum being deducted from the proceeds of said sale, will leave the sum of ——— dollars, to be paid and distributed among the said owners, and parties in interest, according to their several rights; and now, on motion of the said applicant or petitioner, the Court proceed to make distribution and division of the last named sum: from which it appears that the said John Wenter is entitled to the sum of ——— dollars, being one-fourth

of said sum ; that the said Artemus Bagley, is entitled to the sum of ——— dollars, being one-fourth of said sum ; that the estate of Henry Collins, of which John Rigsby is the legal representative, is entitled to the sum of ——— dollars, being one-fourth of said sum ; and that the heirs of Israel Pike, deceased, viz: (*Here name them,*) are entitled to the sum of ——— dollars, being the remaining one-fourth of said sum, in equal proportion, that is to say—the sum of ——— dollars each : It is, therefore, ordered, that the sum to which the said John Wenter, Artemus Bagley, and John Rigsby, as the legal representative of the estate of Henry Collins, deceased, and also, the said Mary Holston, formerly Mary Pike, wife of George Holston, and Charles Pike, are severally entitled, be paid to them respectively ; and that the sum to which the said Augustus Pike is entitled, be paid to Tully Stewart, the guardian of the said Augustus ; the sums to which the said Edward Pike and Lorenzo Pike, are entitled, are retained by the Court, for the reason that the said Edward, who is a minor, has no guardian, and because the said Lorenzo, is supposed to be of unsound mind, said sums to be retained by the Court until a guardian shall be appointed for the said Edward, or until he shall attain full age, as to his proportion, and until further inquiry shall have been had, as to the fact of the mental competency of the said Lorenzo, and until the further order of the Court in the premises. It is further ordered, that said application, and all other matters in writing, pertaining to this proceeding, be recorded.

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[ No. 255. ]

ARTICLES of APPRENTICESHIP under Code § 1215-16.

*State of Alabama,* }  
*Mobile County.* }

This indenture, made this — day of —, 18—, between Edwin Rust, Judge of Probate, in and for said county and State, and his successors in office, of the first part, and John Plane, of said county, of the second part : Witnesseth, that the said Judge has put, placed, bound and apprenticed William Allerton, aged about — years, with him, the said John

Plane, with him, the said Plane to dwell, as an apprentice, until he, the said William, shall attain the full age of twenty-one years, according to the statute in such case made, the parents of the said William being unable to provide for his support ; and the said John Plane, for his part, for himself, his executors and administrators, consents and agrees that the said William shall be so apprenticed and bound to him, and that he, said Plane, for the use of said William, will furnish a sufficiency of good and wholesome provisions, furnish all necessary clothing, washing and lodging, treat him with kindness and humanity, and instruct him in the trade, business or occupation of a house carpenter, (that being the trade or occupation which he, the said Plane, pursues,) have him taught to read, write and cypher as far as the rule of three, and at the expiration of his term of apprenticeship, furnish him with two complete new suits of clothing.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

In presence of	}	EDWIN RUST, Judge, [L. S.]
JAS. CARPENTER.		JOHN PLANE, [L. S.]

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[ No. 256. ]

An ORDER of APPRENTICESHIP made by the Court, under subdivision 8, of § 670, of the Code.

<i>William Barker, a minor.</i>	}	Probate Court, Mobile County,
<i>As to apprenticeship of.</i>		

18—.

This day came the said minor, who is an orphan, a resident of this county, and over the age of fourteen years ; and also, comes John Smith, of this county, being a ship carpenter by trade. And it is now made known to the Court, by the said William, that he is desirous of being bound and apprenticed to the said Smith, until he shall attain the full age of twenty-one years, for the purpose of learning the art and mystery of said trade ; and the said Smith, now here, in open Court, consenting that said William shall be so bound unto him, and also acknowledging himself, by this Court record of his said agreement, to be bound to provide a sufficiency of good and wholesome

provisions, furnish all necessary clothing, washing and lodging ; treat the said William with kindness and humanity ; and instruct the said William in the said trade and occupation of a ship carpenter ; have him taught to read, write and cypher as far as the rule of three ; and at the expiration of his term of apprenticeship, furnish him with two complete new suits of clothing. And it appearing to the Court, that the said agreement is in accordance with law, and that said Smith is a suitable person to have the care and education of the said William : It is ordered, that said agreement be, and the same is hereby ratified and confirmed, and by the authority of this Court, made good and effectual between the said William Barker and the said John Smith ; and the said William Barker is hereby, accordingly, put, placed, bound and apprenticed unto him, the said John Smith, for the purposes and upon the conditions aforesaid, until he, the said William, shall attain the age of twenty-one years.

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[ No: 257. ]

DECLARATION LEGITIMATING and ADOPTING CHILDREN.

—Code § 2008, et seq.

*State of Alabama,* }  
*Mobile County.* }

I, George Galtz, of the county and State aforesaid, being desirous of adopting (*or, if the proceeding is for the purpose of legitimating a bastard, the word recognizing should be substituted in place of the word adopting,*) a female child, named Theresa Jacobson, aged ten years, who is the daughter of Wilhelmina Jacobson, a widow, (*or, an unmarried woman, or my present wife, or as the case may be,*) who resides in this county, so as to make the said Theresa capable of inheriting my estate, both real and personal, in all respects the same as though she were my heir at law : Do, therefore, hereby publicly declare that I have adopted ; (*or, recognized, as the case may be ;*) and that by these presents I do adopt (*or, recognize,*) the said Theresa Jacobson, as my own child. And, I do hereby further declare, that it is my desire that the said Theresa should no longer be named



and called Theresa Jacobson, but that her said name shall be changed, so that hereafter she shall bear and be known by the name of Theresa Galtz.

In testimony whereof, I have hereto set my hand and seal, in the presence of ——— and ———, attesting witnesses hereto, in the city of Mobile, this the — day of —, 18—.

Made and signed in presence of } GEO. GALTZ, [L. S.]  
   A. B. }  
   C. D. }

State of Alabama, }  
 Mobile County. }

I, Edwin Rust, Judge of the Court of Probate, in and for said county and State, do hereby certify that George Galtz, whose name is signed to the foregoing declaration, and who is known to me, acknowledged before me, on this day, that being informed of the purport and contents of the declaration, he made and executed the same voluntarily, for the uses and purposes therein set forth, and on the day the same bears date.

Given under my hand, this the — day of —, 18—.

EDWIN RUST, Judge.

*If the declarant does not appear before the Judge, in person, then, in order to make the declaration effective, it should be proved by both of the attesting witnesses. The following is a form, somewhat copied after the language used in proof of a conveyance, (see Code § 1280,) which is believed to be such as is proper to be used in probating such declaration, viz :*

State of Alabama, }  
 Mobile County. }

I, Edwin Rust, Judge of the Court of Probate, in and for said county and State, do hereby certify that ——— and ———, who are the attesting witnesses to the foregoing declaration, known to me, appeared before me this day, and said witnesses being by me separately sworn, stated that George Galtz, the declarant in the declaration, acknowledged to both of them, as such attesting witnesses,

that he voluntarily made and executed the same, on the day and year, and for the uses and purposes therein named.

Given under my hand, on the — day of —, 18.—

EDWIN RUST, Judge.

*This declaration and acknowledgment, or proof thereof, as the case may be, should be entered upon the minutes of the Court. The following is suggested as a proper form for such entry, to precede the declaration on the minutes, to wit :*

*Theresa Jacobson, a female child to be hereafter }  
known as Theresa Galtz ; and as to her adopt- } 18  
tion, (or, if a bastard, her legitimation.) }*

George Galtz having filed with the Judge of this Court, his declaration in writing, duly acknowledged, (or, proved, as the case may be,) setting forth his desire to adopt (or, recognize,) the said Theresa Jacobson, as his own child, and and that her name should be changed to that of Theresa Galtz : It is ordered, by the Court, that said declaration of adoption, and as to said change of name, together with said acknowledgment (or, proof) thereof, be recorded upon the minutes of this Court, which is accordingly done as follows, to wit : (*Here follows a record copy of the declaration, &c.*)

[ No. 258. ]

GARNISHMENT for the collection of TAXES under section 2, of an Act entitled "An Act to prevent willful evasions of the Revenue laws of the State," approved February 10, 1852.

*State of Alabama, }  
Mobile County. }* In the Probate Court.

*A. B., Plaintiff, }  
vs. } To any Sheriff of the State of Alabama  
E. F., Defendant, } —Greeting :  
C. F., Garnishee, }*

You are hereby commanded to summon — — —, to be and appear before the said Court, at the Court house of said county, in the city of Mobile, on the — Monday of —, A. D. 18—, then and there to answer on oath whether he is indebted to the above named defendant at the time of the

service of this process, or at the time of making his answer hereto, and in what sum or sums; and whether he will not be indebted in future to the said defendant, by a contract existing at the time of the service of this summons, or which may exist at the time of making his answer hereto; and whether he has not in his possession, or under his control, personal or real property, or things in action belonging to the said ———: Herein fail not, and have you then and there this writ.

Witness, Edwin Rust, Judge of said Court, this — day of —, A. D. 18—.

Issued the — day of —, 18—.

Attest: ———, Judge.

[ No. 259. ]

Form of Judgment to be rendered for Taxes, and against Garnishee named in the preceding process.

<p><i>The State of Alabama,</i>  <i>against</i>  <i>John Child, Defendant. The Mobile and</i>  <i>Ohio Railroad Company, Garnishee.</i></p>	}	18
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The collector of taxes for this county having applied to the Judge of this Court, on the twentieth day of August, 1856, stating facts showing that one John Child was then indebted to the State of Alabama, upon an assessment of taxes, theretofore regularly made as required and contemplated by the provisions of law, in this county, against him, the said Child, upon property and interests of said Child, liable to taxation and properly taxable within this county, in the sum of six hundred and eight  $\frac{30}{100}$  dollars; and it having been further made to appear to the satisfaction of said Judge, by the said statement of facts, made by said collector of taxes, that the said money or tax, so assessed, was likely to be lost by delay, and that it could not be collected in the ordinary mode prescribed by law; and it having been further shown, at the same time, by said collector, that he had good reason to believe that the said, "the Mobile and Ohio Railroad Company," was indebted to the said Child: Thereupon, the said Judge, on the said twentieth day of August, issued process of garnishment, in

the usual form against the said, "the Mobile and Ohio Railroad Company," requiring it to appear before him, said Judge, on this the nineteenth day of September, 1856, and make answer to the same. And, now at this day, it is made known to the Court, by due return of said process, with the proper endorsement thereon made by said tax collector, he acting, in respect to said garnishment, as constable or sheriff, that the same has been duly executed upon said Company; and Alfred F. Irwin, the Secretary and Treasurer of said Company, having this day appeared and filed the answer of said Company, in writing and under oath, setting forth, among other things, that the said Company is, and was on the day of the service of said garnishment, indebted to said Child, in the sum of six hundred and eight  $\frac{30}{100}$  dollars, and that he, said Irwin, is the duly authorized agent of said Company, to make its said answer in the premises;\* and the State of Alabama, now appearing, by said tax collector, and asking for judgment in the premises: It is ordered and adjudged, that the State of Alabama, have and recover a judgment against the said Child, for the said sum of six hundred and eight  $\frac{30}{100}$  dollars, the said amount of taxes due from said Child, as aforesaid, besides costs. It is further ordered and adjudged, that said State do have and recover, of and from said Company, the said sum of six hundred and eight  $\frac{30}{100}$  dollars, that being the said amount answered to be due from said Company, to said Child. It is further ordered, that execution may issue in the premises, against said Child and also against said Company.

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[ No. 260. ]

CERTIFICATE of LIMITED PARTNERSHIP.—Code § 1493, et seq.

*State of Alabama,* }  
*Mobile County.* } .

The undersigned, ———, residing in the city of Mobile and State aforesaid, and ———, also of said city and State, have agreed to form a limited copartnership for the transaction of a watch and jewelry business in the

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\* See an act entitled "an act authorizing the garnishment of private corporations," approved January 9, 1856.

city of Mobile, in pursuance of the terms and provisions of the Code of Alabama, on the subject of limited partnership; and we do certify as follows:

1st. The name of the firm under which said business is to be transacted and conducted, is \_\_\_\_\_ & \_\_\_\_\_.

2d. The business of the said copartnership shall be a general watch, jewelry and fancy goods business, including therein, the repairing of watches and time-pieces; and the city of Mobile is the place of the business.

3d. \_\_\_\_\_ is the general partner; \_\_\_\_\_ is the special partner; both residing in the city of Mobile.

4th. The said special partner has contributed to the capital stock of the firm, \_\_\_\_\_ dollars.

5th. The said limited partnership is to commence on this \_\_\_\_\_ day of \_\_\_\_\_, 18—, and to terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B.

C. D.

State of Alabama, }  
Mobile County. }

Came this \_\_\_\_\_ day of \_\_\_\_\_, 18—, before the undersigned, Judge of Probate of Mobile county, the above named parties, \_\_\_\_\_ and \_\_\_\_\_, who are personally known to me, and the said \_\_\_\_\_ and \_\_\_\_\_ did respectively, before me, acknowledge their signatures to the foregoing certificate of limited copartnership, to be genuine, and their act and deed respectively.

In witness whereof, I have hereto set my hand and the seal of said Probate Court, the day and year aforesaid at office, in the city of Mobile.

EDWIN RUST, Judge.

State of Alabama, }  
Mobile County. }

Came this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18—, before the undersigned, Judge of Probate of Mobile county, \_\_\_\_\_, the general partner named in the foregoing certificate of a limited partnership, who being duly sworn, on his oath, saith, that the within named \_\_\_\_\_, has actually and in good faith, paid in cash the sum of \_\_\_\_\_ dollars

to the common stock of the within described limited partnership.

In witness of all which, I have hereto set my hand and the seal of said Court, the day aforesaid.

EDWIN RUST, Judge.

[ No. 261. ]

NOTICE of such PARTNERSHIP to be PUBLISHED.

The undersigned, residing in the city of Mobile, have, this 1st of October, 1856, in pursuance of chapter 1, title 3, part 2 of the Code of Alabama, formed a limited partnership for the transaction of a general watch, jewelry and fancy goods business in the city of Mobile. C. D. is the special partner, and has contributed to the common stock of the firm, the sum of ——— dollars. A. B. is the general partner. The business will be transacted under the name of A. B. Said partnership commences this 1st of October, 1856, and is to continue for the term of three years.

A. B.

C. D.

The terms of the above mentioned copartnership, together with the proper certificates and affidavits, have this day been duly filed and recorded in my office: It is, therefore, ordered, that the above notice thereof, be published for six successive weeks in the Mobile Daily Advertiser and Mobile Daily Register.

EDWIN RUST,  
Judge of Probate, M. C.

[ No: 262. ]

OATHS OF OFFICE to be administered to all OFFICERS.

*State of Alabama, }*  
*Mobile County. }*

I solemnly swear, that I will support the constitution of the United States, and the constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully discharge, to the best of my abilities, the duties of ——— for said county, according to law. And I do

further swear, that I have not directly or indirectly, given, accepted, or knowingly carried a challenge, in writing or otherwise, to any person, being a citizen of this State, to fight with deadly weapons, either in or out of this State; or aided or abetted in the same since I have been a citizen thereof; and that I will not directly or indirectly, give, accept, or knowingly carry a challenge to any person, being a citizen of this State, to fight with deadly weapons, either in or out of this State; or in any manner aid or abet the same during my continuance in office. So help me God.

Subscribed and sworn to be-  
fore me, this — day of —, }  
18—. ———, Judge. }

[ No. 263. ]

FORM of OFFICIAL BOND, adapted to the use of all OFFICERS whose Bonds are approved by the Judge of Probate.

*State of Alabama,* }  
*Mobile County.* }

Know all men by these presents, that we ———, ——— and ———, are held and firmly bound unto the State of Alabama, in the penal sum of ——— dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: Sealed with our seals, and dated this — day of —, 18—.

The condition of the above obligation is such, that where-as the above bounden ———, was on the — day of —, 18—, duly elected (*or*, appointed) to—(*Here insert name of office, &c.*)

Now, if the said ———, shall faithfully discharge the duties of such office, during the time he continues therein, or discharges any of the duties thereof, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and delivered in }  
the presence of }  
——— }  
——— }

———, [L. S.]  
———, [L. S.]  
———, [L. S.]

Taken and approved the — day of —, 18—.

EDWIN RUST, Judge.

[ No. 264. ]

PETITION for a DISCHARGE from an OFFICIAL BOND by a SECURITY.—  
Cede § 144, et seq.

To the Honorable Edwin Rust, Judge of Probate in and for  
Mobile county and State of Alabama :

The undersigned respectfully represents unto your Honor, that on the — day of —, 18—, he became one of the securities of William Cashin upon his official bond as tax collector for said county ; which said bond was executed in the penal sum of two hundred thousand dollars, and was in duplicate parts, one part being on file and of record in the office of your Honor, and the other duly filed in the office of Comptroller of Public Accounts of this State, said bond having been first, in due form, approved by your Honor on the — day of —, 18—.

Your petitioner further states, that Artemus Northrup, one of the co-securities in said bond, has departed this life since said bond was so executed and approved, and that no additional security has been given in his stead. Your petitioner further states, that a short time since he received notice, as such security, from said Comptroller, that the said Cashin was in default, as such tax collector, and that a suit would be commenced against him, this petitioner, as such security, for the sum of ten thousand two hundred dollars, that being the alleged amount of said default. Your petitioner, therefore, says, that by reason of the facts aforesaid, and of his observations in the premises, and from such information as he has obtained as to the pecuniary condition and property of said Cashin, he is fully satisfied and verily believes, and therefore distinctly states and charges, that he is in danger of being made liable on said bond ; and that, in case he should be so made liable, he can have no adequate remedy against said Cashin, in consequence of the inability of said Cashin to discharge such liability.

In consideration of all which, your petitioner, therefore, files this, his application, and prayer to your Honor, that the said Cashin may be required, in manner and form as prescribed by law, to be and appear before your Honor, at such time and place as your Honor shall appoint, and to give a new bond as such tax collector ; and that your petitioner shall be discharged from further liability on account thereof. And as in duty bound, &c.

OBADIAH FROST.

Subscribed and sworn to, &c.



## [ No. 265. ]

FORM for REQUISITION upon the principal in an OFFICIAL BOND to give NEW BOND.—Code § 146, et seq.

*The State of Alabama.*

To any Sheriff of the State of Alabama,—Greeting :

We command you to cite William Cashin, tax collector for Mobile county, if to be found in your county, to be and appear before the Judge of the Probate Court for Mobile county, at the Court house of said county in the city of Mobile, on the — day of —, 18—, to give a new bond, as such tax collector, in accordance with the prayer in the application of Obadiah Frost, one of the sureties on his present official bond, this day addressed to the said Judge, and which is on file in his office ; and further to do and suffer such things as shall be considered and ordered in the premises by the Judge aforesaid. Herein fail not, and have you then there this writ, &c.

Witness, Edwin Rust, Judge of the Probate Court of Mobile county, at office, this — day of —, 18—.

Attest :

EDWIN RUST, Judge.

## [ No. 266. ]

CERTIFICATE of PROBATE JUDGE as to OFFICIAL character of JUSTICES of the PEACE, NOTARIES, &c.

*State of Alabama, }*  
*Mobile County. }*

I, Edwin Rust, Judge of the Court of Probate, in and for said county and State, do hereby certify, that A. B., whose name and genuine signature appear to the annexed certificate, was at the time of attesting the same, a—(*stating the name of the office*)—in and for said county, duly commissioned and qualified, and that as such, his acts and doings, are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and  
 [L. S.] affixed the seal of said Court, at office, this —  
 day of —, 18—.

EDWIN RUST, Judge.

## [ No. 267. ]

CERTIFICATE to be ENDORSED on EXECUTION issued by a JUSTICE, so that it may be executed in ANOTHER COUNTY.—Code § 2804.

*State of Alabama,* }  
*Mobile County.* }

I, Edwin Rust, Judge of Probate in and for said county and State, do hereby certify, that A. B., whose genuine signature is affixed to the within execution, is, and was on the day of the date of said execution, a justice of the peace in and for the county of Mobile, and that all his acts and doings, in the premises, are entitled to full faith and credit.

Witness, my hand and the seal of said Court, at office, in  
 [L. S.] the city of Mobile, this the — day of —, 18—. EDWIN RUST, Judge.

## [ No. 268. ]

AFFIDAVIT as to SALE of SLAVE by AUCTIONEER, BROKER, or AGENT.  
 See Acts 1855-'6, p. 20.

*State of Alabama,* }  
*Mobile County.* } Probate Court.

Before me, Edwin Rust, Judge of said Court, personally appears John Snooks, and the said Snooks being by me first duly sworn, deposes and says, under oath, that John Yeoman is the owner of a certain slave named Moses, of yellow complexion, and aged about twenty years, as near as affiant knows or can tell, which slave is about to be sold, offered or exposed for sale in said county: that John Yeoman is a resident citizen of this State, and has owned such slave for more than one year immediately preceding such sale, offer or exposure for sale within this State; and that said slave is sold solely for and on account of John Yeoman, and is not owned by any trader, broker or auctioneer, or other person selling slaves on speculation, or as a business.

Subscribed and sworn to by said }  
 Snooks, this the — day of —, }  
 18—. EDWIN RUST, Judge. }

JOHN SNOOKS.

[ No. 269. ]

## APPLICATION for RETAIL LICENSE.—Code § 1056.

State of Alabama, }  
 Mobile County. }

To the Hon. Edwin Rust, Judge of Probate for said County:

We, the undersigned citizens of said county, hereby certify, that we reside within five miles of—(*the name of the party to be licensed*)—who is an applicant for a license to sell vinous or spirituous liquors in said county; that we are acquainted with him; that he is possessed of a good moral character, and, in all respects, is a proper person to be licensed.

Given under our hands this — day of —, 18—.

(*The above application must be signed by six respectable freeholders or householders of the county.*)

—

(*Before the license can be issued by the Judge the applicant must take and subscribe an affidavit, the form of which is given below; and the certificate and affidavit must both be filed in the office of the Judge of Probate.*)

## AFFIDAVIT.—Code § 1057.

State of Alabama, } I, (*name of the party licensed*) do solemnly swear, that I will not sell any  
 Mobile County. } vinous or spirituous liquors to, or sell to, or purchase from, any slave, any article or commodity without the permission of the owner, master, or overseer of such slave; and that I will not knowingly suffer the same to be done by my partner, clerk, agent, or any other person, upon or about my premises, if in my power to prevent the same: and further, that I will not allow any gaming of any kind to be carried on, on or about my premises, if in my power to prevent the same.

Subscribed and sworn to before }  
 me this — day of —, 18—. }  
 EDWIN RUST, Judge. }

— —

[ No. 270. ]

LICENSE.—Code: Subdivision 1 of § 397.

*State of Alabama,* } Office of the Judge of the Probate  
*Mobile County.* } Court of said county.

To all to whom these presents shall come—Greeting :

I, Edwin Rust, Judge of said Court, do hereby authorize and license John Barleycorn, to retail vinous or spirituous liquors—(*or, stating any thing else for which license is required*)—at the south-west corner of Government and Royal streets, in the city of Mobile, for the term of one year, from and after this date, he having paid me the requisite sum for State tax, the county tax thereon and fees, and having otherwise complied with the statute in such case made.

In testimony whereof, I have hereunto set my hand, and  
 [L. S.] affixed the seal of said Court, at office, in the  
 city of Mobile, this the — day of —, A. D.,  
 18—. Attest:

EDWIN RUST, Judge.

[ No. 271. ]

CONSENT of Parent or Guardian to the MARRIAGE of a Minor.—  
 Code § 1950.

*State of Alabama,* } Probate Court.  
*Mobile County.* }

To the Hon. Edwin Rust, Judge of said Court :

The undersigned respectfully represents, that he (*or, she*) is — of —, who is under the age of eighteen years, and who resides in said county : that a marriage is contemplated between the said — and one —, and he (*or, she,*) hereby consents that a license, for such purpose, may be issued by your Honor.

Given under my hand, this — day of —, A. D. 18—.

Attest : A. B. }

Attest : C. D. }

E. F.

Affidavit to the genuineness of the foregoing consent, required to be made  
by one of the attesting witnesses.

*State of Alabama,* }  
*Mobile County.* }

Before me, Edwin Rust, Judge of the Court of Probate, in and for said county and State, personally appeared C. D. who being by me duly sworn, deposes and says, that he is one of the witnesses to the foregoing instrument of writing; that said E. F. signed the same in presence of deponent and of the other witness, after being informed of the contents thereof, and that deponent attested the same in the presence of the said E. F., and of the other witness.

Subscribed and sworn to, }  
this — day of —, 18—. }  
— — —, Judge. }

C. D.

[ No. 272. ]

MARRIAGE BOND required upon the issuance of License.—Code § 1950.

*State of Alabama,* }  
*Mobile County.* }

Know all men by these presents, that we, (*name the party to be married and his security,*) are held and firmly bound unto the State of Alabama, in the penal sum of two hundred dollars, for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —, A. D. 18—.

The condition of the above obligation is such, that whereas the above bound (*the party to be married,*) has obtained license to intermarry and be joined together in the bonds of matrimony with (*name of female.*) Now, if there be no lawful cause why such marriage should not be celebrated, then this obligation is to be void, otherwise to be and remain in full force and effect.

Taken and approved, the }  
— day of —, 18—. }

— — —, [L. S.]  
— — —, [L. S.]

[ No. 273. ]

## MARRIAGE LICENSE.—Code § 1949.

*State of Alabama,* } Office of the Judge of the Probate  
*Mobile County.* } Court of said County.

To any one of the State Judges, or to any Ordained Minister of the Gospel, or to any Justice of the Peace of said County—Greeting :

Know ye, that you are hereby authorized and licensed to join together in the bonds of matrimony, (*name of male,*) and (*name of female,*) maiden over the age of eighteen years, (*or, widow, or, as the case may be.*)

Given under my hand and the seal of said Court, this the — day of —, 18—.

EDWIN RUST, Judge.

[ No. 274. ]

MARRIAGE CERTIFICATE to be endorsed on the back of the License, and returned therewith, within one month after the marriage.—Code § 1952.

*State of Alabama,* }  
*Mobile County.* }

To the Judge of Probate of said County :

I hereby certify, that I this day solemnized the rites of matrimony, between A. B. and C. D., who are within named, at the residence of E. F., in said county.

Witness, my hand, this the — day of —, 18—.

[ No. 275. ]

## MARRIAGE CEREMONY.\*

The contract which you are now about to make, is by far the most important in life. Marriage is an institution of Divine appointment, evidently calculated to promote the present comfort and future happiness of the human family ; and its benign influence is powerfully felt, not only by the individuals and among families, but upon the peace, pros-

\* Though this form is modelled after no other, it is proper I should say, that I have derived aid in its preparation, from the form to be found in Hitchcock's Alabama Justice, page 348-9-50.

perity and happiness of communities and States. Thus sanctioned by the laws of God and man, this contract can only be annulled through crime. It should not, therefore, be lightly entered upon ; and I charge these good people here present, that if they, or any of them, know of any just cause why this marriage should not be solemnized, they now declare it, otherwise forever hereafter hold their peace.

*(The person performing the ceremony should, after a suitable pause upon the above, address a similar charge to the bride and bridegroom.)*

*Addressing the bride and bridegroom :* And I solemnly charge you, as you hope for joy and peace in the marriage state, if either of you know any just cause why the rights of matrimony should not be celebrated between you, that you now frankly make it known.

It is, then, your will to proceed.

*(The parties should now join their right hands.)*

Do you, Sir, take this lady to be your lawful wife ; and do you solemnly promise, before God and these witnesses, that you will be to her a faithful and an affectionate husband ; and that, forsaking all others, you will cleave to her alone, until you shall be separated by death ? Do you so promise ?

*To which the bridegroom will answer, I do.*

Do you, *(to the bride,)* take this gentleman, whom you hold by the hand, to be your lawful husband ; and do you solemnly promise, before God and these witnesses, that you will be to him a faithful, affectionate and obedient wife ; and that, forsaking all others, you will cleave to him alone, until you shall be separated by death ? Do you so promise ?

*To which the bride will answer, I do.*

Hoping that you will not cease to remember that we are all imperfect ; that you will at all times cultivate for each other a sincere, pure and ardent affection, which, alone, will enable you steadily to bear with each other's infirmities, and thus place your future welfare and happiness upon a sure foundation, I now, according to the ordinances of God, and in the name of the people of this State, pronounce you Husband and Wife. "Whom God hath joined together, let no man put asunder."

[ No. 276. ]

PETITION for the EMANCIPATION of a SLAVE.—Code § 2044,  
et seq., § 2048.

*State of Alabama,* }  
*Mobile County.* }

To the Honorable Edwin Rust, Judge of Probate for said  
County :

The petition of Charles Gaston, a citizen of this county, respectfully represents unto your Honor, that he is unembarrassed in his pecuniary affairs, (Code § 2048,) and that he is the owner of a certain male slave, named Jonas, sometimes called Jonas King, who is aged about twenty-nine years, of black complexion ; in stature about five feet ten inches, and of a stout square frame, which slave your petitioner is anxious to emancipate, (Code § 2044,) for the reason that the said slave has always served his master, your petitioner, with great zeal and unswerving fidelity ; and for divers other good and sufficient reasons, which your petitioner will make known and prove at such time, and in such manner as your Honor shall direct.

Your petitioner, therefore, prays your Honor, to set a day when this, his petition, can be heard ; that the proper advertisement\* may be made in the premises, and that all such orders and decrees may be made and entered, as may be necessary and proper to effect the due emancipation of the said Jonas. And as in duty bound, &c.

CHARLES GASTON.

Subscribed and sworn to, &c.

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\* FORM FOR SUCH ADVERTISEMENT :

*State of Alabama,* } Probate Court.  
*Mobile County.* }

18

*In the matter of the application of Charles Gaston, for the emancipation of his slave Jonas, alias Jonas King.* } This day came the said Charles Gaston, and filed his said application in writing, setting forth, among other things, that he is the owner of said slave, and that for causes, which he alleges he believes to be sufficient, he is desirous of effecting his emancipation, in accordance with law : It is ordered, that said application be set down for hearing on the — day of —, 18—, at which time all parties in interest can appear and contest the same if they think proper.

EDWIN RUST, Judge.



[ No. 277. ]

## ORDER EMANCIPATING SLAVE.—Code § 2046, et seq.

*Jonas, alias Jonas King, a slave.* } Probate Court, Mobile  
*As to emancipation of.* } County, 18—.

Charles Gaston, a citizen of this county, having, on the — day of —, 18—, applied to the Judge of this Court, by a written petition, setting forth, in said petition, that he, the said slave, is the property of him, the said Charles; that said slave is a male, named Jonas, sometimes called Jonas King, aged about twenty-nine years; of black complexion; in stature about five feet ten inches; and of a stout square frame; and that he is anxious to emancipate said slave, for the reason that said slave has always served his master, said petitioner, with great zeal and unswerving fidelity, and for divers other reasons, alleged, in said application, to be good and sufficient, and to be made known and proven to the Judge of this Court at the time of hearing said petition; and, also, alleging, in said petition, that he, the said Charles, is unembarrassed in his pecuniary affairs: And the Judge of this Court, upon the filing of said petition, having caused an advertisement to be made in the Mobile Daily Register, a newspaper published in this county, which has been continued for sixty days, giving notice of the said application, and of the time fixed for its determination; and this being the day which was appointed by the Judge of this Court for determining the matter of said application, as was duly stated in said advertisement: And it now being shown, by due proof, to the satisfaction of the Court, that all and singular, the said statements and allegations in said application contained, are strictly true; that said slave is of good character, and no sufficient objection to his emancipation having been made: And it further appearing that the said Gaston has paid the cost of said advertisement: It is ordered and decreed, by the Judge of this Court, that said slave Jonas, otherwise Jonas King, be, and he is hereby emancipated and set free. It is further ordered, that said petition be recorded on the minutes of this Court, which is done accordingly; and the said application is in the words and figures following, to wit: (*Here copy the petition at large.*)

## [ No. 278. ]

CERTIFICATE of Probate Judge to the book of TAX ASSESSMENTS,  
when said book is delivered to the Tax Collector.—Code § 445.

*State of Alabama,* }  
*Mobile County.* }

I, Edwin Rust, Judge of the Court of Probate, in and for said county and State, do hereby certify, that the foregoing is a correct statement, from the original assessment books for the year 18—, of the names of the persons against whom taxes have been assessed, and the amount assessed against each.

In testimony whereof, I have hereunto set my hand and  
[L. S.] affixed the seal of said Court, at office, this —  
day of —, 18—.

EDWIN RUST, Judge.

## [ No. 279. ]

PROOF to be made by an OWNER to regain possession of SLAVE committed as a RUNAWAY.—Code § 1029.

*State of Alabama,* }  
*Mobile County.* }

Before me, Edwin Rust, Judge of the Court of Probate, in and for said county and State, personally appeared Joseph Prowley, who being first duly sworn, says, that he is a resident of Kemper county, State of Mississippi; that he knows the slave Isam, who is now confined in the jail of Mobile county, committed by the name of Mose, as a runaway, to be the *bona fide* property of John Mollineaux, of Nashville, in the State of Tennessee; and that he, this deponent, has no interest in said slave; and cannot be in any way benefited or injured, directly or indirectly, whether the said Mollineaux shall obtain said slave or not.

Subscribed and sworn to }  
this — day of —, 18—. }  
— — —, Judge. }

JOSEPH PROWLEY.

## [ No. 280. ]

ORDER to SHERIFF to DELIVER RUN-AWAY SLAVE to owner on filing  
above PROOF of PROPERTY.—Code § 1030.

*State of Alabama,* }  
*Mobile County.* }

To the Sheriff of said County—Greeting :

John Mollineaux having this day appeared and produced proof, which is satisfactory to me, that the slave named Isam, who was committed by the name of Mose, to the jail of Mobile county, as a runaway, on the — day of —, 18—, by A. Ball, Esq., a justice of the peace for said county, is his bona fide property, you are, therefore, hereby commanded to deliver the said slave to the said Mollineaux, upon the payment of the costs of advertising and all other expenses attending the said imprisonment.

Given under my hand this — day of —, 18—.

EDWIN RUST, Judge Probate, M. C.

## [ No. 281. ]

PETITION for leave to erect a DAM and MILL upon a NON-NAVIGABLE  
STREAM.—Code § 2089, et seq.

To the Hon. Edwin Rust, Judge of Probate for Mobile  
County, Alabama :

The application of Caleb Martin, of said county, respectfully represents unto your Honor, that he is the owner, in fee simple, of the following described lands, situated and located in said county, to wit : (*Here describe lands.*)

That a creek or water course, which is not navigable, known and designated as Acquia creek, runs through said land ; that petitioner is, therefore, the owner of the lands on each side of said creek ; that he proposes to build a dam, of the height of twelve feet, across said creek, for the purpose of erecting a saw mill on the north side of said creek.

Your petitioner therefore prays, your Honor, that such orders and proceedings may be made and had, as will be necessary and proper to authorize and empower him to erect said dam and mill, as above set forth. And as in duty bound, &c.

CALEB MARTIN.

Subscribed and sworn to, &c.

[ No. 282. ]

WRIT to SHERIFF requiring him to SUMMON a Jury of INQUEST, &c.  
under foregoing petition.

*State of Alabama,* } Probate Court. 18  
*Mobile County.* }

To the Sheriff of said County—Greeting :

Whereas, Caleb Martin, of said county, has this day filed his written application with the Judge of said Court, praying that such orders and proceedings may be made and had as will be necessary and proper to authorize and empower him to erect a dam and saw mill—a copy of which application is hereto annexed :

You are, therefore, hereby required, to summon seven disinterested freeholders of this county, to meet on the — day of —, 18—, at the place where the dam is to be erected, as specified in said application ; and then and there to inquire touching the matters contained in said application.

Herein fail not, and make due return of this writ as required by law.

Given under my hand, this — day of —, A. D. 18—.

EDWIN RUST, Judge.

[ No. 283. ]

SHERIFF'S RETURN to foregoing SUMMONS.

Received on the — day of —, 18—, and in accordance with the directions of the within writ, I summoned A. B., C. D., E. F., G. H., I. J., K. L. and M. N., who are seven disinterested freeholders of this county to meet on the — day of —, 18—, at the place where the dam is to be erected, as specified in the application of the said Caleb Martin ; on which day, I attended, with a copy of said application, and, after having sworn said jury to discharge their duties fairly and to the best of their ability, I did charge them—

1st. To examine the land above and below the intended location of said dam, as shown by said application, belonging to others, which might probably be overflowed or injured, and to ascertain and assess the damages resulting from the erection of such dam, to the several owners of such land ;

2d. If the residence of such owner or the out houses, enclosures, gardens or orchards thereto immediately belonging, would be overflowed ;

3d. If the health of the neighborhood would probably be endangered ;

4th. If any other mill or water-works would be overflowed.

And the inquest of said jury having been reduced to writing, and signed by them, and delivered to me, is herewith returned as required by law.      Mobile, June —, 18—.

JOHN LEVIRE, Sheriff M. C.

[ No. 284. ]

INQUEST of DAMAGES by the JURY.

*State of Alabama,* }  
*Mobile County.* }

The undersigned, the jury summoned by the sheriff of said county, in pursuance of the annexed writ, do hereby certify, that they this day met at the place where the dam is to be erected, which is specified in the application of the said Caleb Martin, to inquire, touching the matters contained in said application ; and, after having been first duly sworn by the said sheriff, and charged by him as required by law, they proceeded and made the examination and inquiry, as required by law and the said charge, in a thorough and impartial manner : They further certify, that they do find that the land of Jeremiah Miller, which is situated above the place where the dam is to be erected, will be overflowed and injured ; that they have ascertained and assessed the damages resulting from the erection of said dam to the said Miller, at the sum of three hundred dollars ; and that no residence of any owner, nor the out houses, enclosures, gardens or orchard immediately belonging thereto will probably be overflowed, and that the health of the neighborhood will not probably be endangered, nor any other mill or water-works be probably overflowed by reason of the erection of said dam and mill.

Given under our hands this — day of —, 18—.

A. B.

I. J.

C. D.

K. L.

E. F.

M. N.

G. H.

[ No. 285. ]

CITATION or NOTICE upon the preceding RETURN.

The State of Alabama, to any Sheriff of said State—  
Greeting :

We command you to summon Jeremiah Miller, if to be found in your county, to be and appear before Edwin Rust, Judge of the Probate Court for Mobile county, at the Court house of said county in the city of Mobile, on the — day of —, 18—, and show cause why Caleb Martin should not have permission to erect a dam, in accordance with his application heretofore made to the said Judge, and which is now on file in the office of said Judge. Herein fail not, and have you then there this writ, &c.

Witness, Edwin Rust, Judge of the Probate Court of Mobile county, at office, this — day of —, 18—.

Attest :

EDWIN RUST, Judge.

[ No. 286. ]

ORDER granting the APPLICATION for leave to erect a DAM or MILL.

<i>In the matter of the application of Caleb Martin, to erect a dam and saw mill.</i>	}	Probate Court, Mobile County, 18—.
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The said Caleb Martin, having on the — day of —, 18—, made application, in writing, to the Judge of this Court, praying that such orders and proceedings might be made and had, as would be necessary and proper to authorize and empower him to erect a dam or saw mill, which application is hereinafter recorded in full, as part of this order and decree; and said Judge having thereupon, issued a writ to the sheriff, requiring him to summon seven disinterested freeholders of this county, to meet at the place where the dam is to be erected, on a day specified in said writ, then and there to enquire touching the matters contained in said application; and the said sheriff having attended, with a copy of said application, and the jury, on the day appointed; and said jury having been duly sworn by said sheriff, and charged by him, as required by law; and the inquest of said jury having been reduced to writing, signed by them, and delivered to said sheriff, and by him returned, together

with said writ, with his return thereon endorsed, to the office of the said Judge, on the — day of —, 18—, as required by law ; and the said Judge having, on the return of the inquest, summoned Jeremiah Miller, the owner of the lands above the place where the dam is to be erected, which was found, by the inquest, to be liable to damages, to appear before him on this day, and show cause why the said applicant should not have permission to erect his dam—a copy of which summons, as shown by the return of said sheriff, was personally served upon the said Miller, more than ten days before this day. And it being now made to appear to the satisfaction of the said Judge, from the said inquest, and from other sufficient evidence, now submitted, that no residence of any owner, or the out houses, enclosures, garden or orchard, immediately belonging thereto, will probably be overflowed ; that the health of the neighborhood will not be endangered, and that no other mill or water works will probably be overflowed, by reason of the erection of said dam ; and the said applicant having paid the costs of this proceeding : It was, therefore, ordered, by the said Judge, that the said applicant have permission to erect his dam in the manner prayed in his said application, upon his complying with the law in such case made and provided. It is further ordered, that all writs, summonses, notices, inquests and returns, and all other writings pertaining to this proceeding, be recorded on the minutes of said Court ; and the same is now here so done accordingly ; to wit :

*(Here insert, in their regular order, the application, writ, sheriff's return, the inquest of the jury, and the summons to the owner, with the sheriff's return thereon.)*

NOTE.—The foregoing proceeding has not been drawn to meet all the demands of the provisions of the Code, which apply to it. It is believed to be accurate as far as it goes ; and the author is persuaded that the forms compiled will be a sufficient ground work to enable any person to frame his papers to meet any case that may arise under our statutes.

[ No. 287. ]

WARRANT for violation of the LICENSE LAWS.—Code § 401.—See  
Appendix page 317.

*State of Alabama,* } Probate Court of said County.  
*Mobile County.* }

Whereas, it doth appear to the satisfaction of the undersigned, the Judge of said Court, that one Martin Harrington, of the city of Mobile, in said county, is engaged in the business of keeping an eating house, located on the north side of Government, between St. Emanuel and Royal streets, in said city, without any license therefor, and in violation of the provisions of subdivision 9 of section 397, of the Code of Alabama :

You are, therefore, hereby commanded, forthwith to arrest the said Martin Harrington, if to be found in your county, on a charge of violating the revenue law, as aforesaid, and him to bring before me at my office, at the Court house in the city of Mobile, to be dealt with as the law directs in such cases. And have you then and there this writ with your due return as to how the same has been executed.

Given under my hand, this, the ninth day of March, A. D., 18—.

EDWIN RUST, Judge.



# APPENDIX.

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## AN ACT

Further to equalize and improve the Revenue Laws.

SEC. 4. *Be it further enacted*, That licenses may be hereafter granted by Judges of Probate of the different counties to practice the Daguerrean art at one station in the county or in a village not having more than five hundred inhabitants, on the applicant paying as a State tax, five dollars ;

In towns with not more than four thousand inhabitants, ten dollars ;

In cities with more than four thousand inhabitants, twenty-five dollars ;

To practice the art generally anywhere in the State, fifty dollars ;

For the exhibition of a circus, feats of activity and sleight of hand, for each exhibition, not exceeding twenty-four hours, ten dollars.

These provisions are to supersede rates prescribed in the Code. A license may be obtained as aforesaid for a ten pin alley at any watering place for six months only by paying annually as heretofore, ten dollars.

And for a billiard table, twenty-five dollars.

But if used for a longer time during the year, under any pretence, the owner or proprietor of the alley or billiard table shall be liable to indictment, in the same manner as if no license had been granted. And it is hereby expressly made the duty of the Judge of Probate of each county by himself or agent to inquire of every person, doing or offering to do any business for which a license is required under this or any other act. And ascertain whether the law has been complied with, and if not to cause the person to be bound over to Court. When any citizen, assessor, or other public officer, may have information and believe that money due for the tax will be lost to the treasury, by removals or otherwise, unless received immediately, the same may be paid to the county treasurer, who is required to give duplicate receipts therefor, one to the person paying, the other to the Judge of Probate, who shall endorse it to the collector. The treasurer shall pay the same over to the collector, so soon as collections commence to be

paid over by him, as other money, and the treasurer charging himself with any portion thereof which belongs to the county treasury. And all moneys due the county treasury shall be paid over as soon as collections are completed, to the county treasurer, or it shall be the duty of the treasurer as well as that of the solicitor of the district in his absence or default, in the name of the county, on three days previous notice, to move for, and obtain a judgment, for the same, the interest and costs, and ten per cent. damages may be added by the Court, if the circumstances require it, against any officer and his securities, on their official bonds, or other person holding the same.

SEC. 5. *Be it further enacted*, That instead of a transcript or copy of the assessment books by the assessor, the Judge of Probate is required to make out and forward to the Comptroller of Public Accounts an abstract of the same in such form as said comptroller may prescribe and direct, and the Court of commissioners may make such allowance to said judge therefor, as they may think adequate and just. And the judge and commissioners shall hereafter receive two dollars and fifty cents per day (five cents per miles for travel and ferriage) while closely and necessarily engaged in examining the books and performing other duties in connection with the revenue, but the judge and one commissioner only shall be competent to do all such duty in the event, a fuller attendance is not deemed indispensable by the Court.

Approved February 10, 1852.

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## AN ACT

To prevent willful evasions of the Revenue Laws of this State.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That it is the duty of all county officers to see within the sphere of their observations, that the revenue laws are observed and faithfully executed, and if any Judge of Probate, sheriff, clerk, assessor or collector or other county officer have reason to believe that any person is peddling goods of any kind as agent or otherwise, or is in any capacity exhibiting or selling slaves, or doing any other business for which license is required, without license, or is doing any other act by which the revenue laws of this State (or any provisions thereof) are directly or indirectly violated or evaded, it is hereby made the duty of such officer to make affidavit of the same immediately before some justice of the peace, and said justice shall cause such person to be on warrant, brought forthwith before him, and if the proof be sufficient, bound over with good security to answer for the charge at the next Circuit Court: he must also summon or bind over a sufficient number of

witnesses who know the facts; the justice may also cause such persons to be bound over on their own observation or knowledge of the facts.

SEC. 2. *Be it further enacted*, That when an assessment is made for money loaned or used on or for any item, or species of property, interest, employment, &c. whatever, as required and contemplated by the provisions of law, or claim made for license, and the money due thereon is likely to be lost by delay, or cannot be collected in the ordinary mode prescribed by law, it is the duty of the collector if he have good reason to believe that any person is indebted to or hath effects of the person from whom the amount is due for such assessment, &c. to apply to the Judge of Probate, stating facts to him, the amount due, to whom assessed and the name of the person indebted; and said Judge must issue process of garnishment in the usual form against the person indebted, requiring him to appear before him at any time he may appoint not beyond thirty days, said garnishment to be executed by the collector, who, in respect to such garnishment is to act as constable or sheriff, said Judge has jurisdiction of any amount, but is to proceed in all other respects, as in cases of garnishment before justices of the peace, if a sufficient amount be condemned in the hand of the garnishee to pay the assessment and costs. The costs are one dollar to the Judge and one dollar and fifty cents to the collector, to be paid by the garnishee as a part of the amount condemned, and to be collected by execution if not paid. Money thus realized must be immediately paid over and accounted for in the proper list and as other moneys are.

SEC. 3. Any county officer who shall knowingly neglect any duty contemplated and prescribed by this act, is guilty of a misdemeanor, and may be proceeded against by indictment, and on being found guilty, fined any sum the jury trying the offence may assess.

Approved, February 10, 1852.

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#### AN ACT

To change the time of Assessing and Collecting the Taxes, and for other purposes.

SEC. 3. *Be it further enacted*, That the Court of county commissioners shall on the second Monday in August in each year, examine and correct such assessment returns, and after such examination shall be turned over to the Judge of Probate, who shall cause to be made out from the same a true and perfect statement of the amount assessed against each tax payer, according to the requirements of section four hundred and forty-five of the Code, which statement, after being carefully compared with the original, shall be delivered to the tax collector by the second Monday

in September next ensuing ; and he shall also make the abstract of the same required by section four hundred and forty-four of the Code, and forward the same to the comptroller by the first of December in each year.

SEC. 10. *Be it further enacted*, That notaries, commissioners of deeds for other States, clerks of the Circuit Courts, must, by the first Monday in September, in each year, make returns of, on oath, and pay to the Judges of Probate of their respective counties, the amounts received by them for the State up to the first Monday of September.

SEC. 11. *Be it further enacted*, That Judges of Probate must, by the first Monday in November in each year, make returns of on oath, and pay to the tax collector of their respective counties the amount received by them on account of the State, for licenses, or any other account, up to the first Monday of November. Such return must show to whom and for what each license was granted, and the amount received therefor, the amount received from any other person, and for what ; and a duplicate of such return must be transmitted to the comptroller by the first of December in each year, with the tax collector's receipt thereon for the money.

Approved, February 16, 1854.

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#### AN ACT

To amend Section three hundred and ninety-seven of the Code.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the eighth division of section three hundred and ninety-seven, be, and the same is hereby so amended as to make it apply and have reference alone to cities, towns, villages and watering places that have been, or may hereafter be incorporated by law, or where the number of inhabitants of said cities, towns, villages or watering places shall exceed one hundred : *Provided*, The provisions of this act shall not apply to watering places or watering resorts.

Approved, February 9, 1854.

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#### AN ACT

To amend Section three hundred and ninety-seven of the Code.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That subdivision sixteen of section three hundred and ninety-seven of the Code, be, and the same is hereby so amended, that five hundred dollars shall hereafter be paid, for a license to peddle for one year, on any steamboat or water craft in this State.

SEC. 2. *And be it further enacted*, That part sixteen of section three hundred and ninety-seven of the Code, be further amended, so as to read five hundred instead of seventy-five, three hundred instead of forty, and two hundred instead of twenty: *Provided*, That the provisions of section two of this act, shall apply only to the counties of Barbour, Marengo, Russell, Cherokee, Henry, Monroe, Lawrence and Macon.

Approved, February 18, 1854.

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#### AN ACT

To amend the seventeenth paragraph of Section three hundred and ninety-seven of the Code of Alabama.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened*, That the seventeenth paragraph of section three hundred and ninety-seven of the Code, is hereby so amended, that no auctioneer, broker or agent for the sale of slaves, shall be required to pay any tax or to procure a license for the sale, offer or exposure for sale of any slaves, made by such auctioneer, broker or agent, in any county in this State: *Provided*, That the owner or owners, or any one of them, or the auctioneer, broker or agent, will make affidavit in writing to whom such slave belongs, and that such owner or owners of such slaves are residents of this State, and have owned such slave for more than one year immediately preceding such sale, offer or exposure for sale within this State; and shall file such affidavit with the Judge of Probate, in every county where such slave is sold, offered or exposed for sale.

SEC. 2. *And be it further enacted*, That this act shall be so construed as to apply only to such slaves as may be sold by any trader, broker, auctioneer or agent, on commission for citizens of the State, and which slaves have been owned in the State for more than one year preceding the sale, and shall in no case apply to any slave owned by any trader, broker, auctioneer, or other person selling slaves on speculation or as a business, and the affidavit required in the preceding section shall set forth these facts.

Approved, February 7, 1856.

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#### AN ACT

To enlarge the jurisdiction of the Probate Court, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the Probate Courts of this State, shall, within their respective counties, have jurisdiction to order the sale of lands, in the following cases,

in addition to those now provided by law, and to order money to be invested in real or personal estate, in the cases wherein they are now authorized by law to order a sale of real estate, as well as in the cases provided by this act: First, when it shall appear that any infant, lunatic or person, *non compos mentis* owns land, and it would be to the interest of such person to sell the same, and invest the money in personal estate or put it out at interest: Second, when it shall appear advantageous to invest in real or personal estate the money of infants, lunatics and persons *non compos mentis*: Third, when said Court is satisfied that it will be more advantageous to the interests of the estate, of idiots, lunatics or persons *non compos mentis*, to sell the real; than it would be to sell the personal estate of such person, either for the purpose of paying debts, contracted by such person when of sound mind, or of paying debts contracted for their comfortable maintenance and support, whilst of unsound mind. Fourth, when any estate shall be ordered to be kept together for ten years, or for a shorter period, and moneys shall accumulate in the hands of the administrator or guardian not required for the use of the estate, the Judge of Probate, having jurisdiction thereof, may order the said moneys to be loaned out, or any part thereof, to be invested in the purchase of personal or real estate.

SEC. 2. *Be it further enacted*, That the proceedings to effect such sale or investment as is contemplated by this act, must be by petition filed by the administrator of such intestate's estate, or by the guardian of such infant, lunatic, or person *non compos mentis*, setting forth one of the grounds enumerated in the first section of this act, or one of those now required by law: and upon the filing of such petition by such administrator or guardian, it shall be the duty of the Court to set a day, not less than forty days from the day on which it is filed, to hear the same, and he shall cause citations to issue to the heirs at law of such intestate, if resident in this State, or to the infant or infants, if over the age of fourteen years, when the petition is filed by a guardian—and if such infants are under the age of fourteen years, then to the person who has the custody of them; and in the case of persons *non compos mentis* and lunatics, to the next of kin of such persons *non compos mentis* and lunatics, or the person who has charge of them, notifying such heirs at law, infants or persons in charge of such lunatic or person *non compos mentis*, of the time and place at which such petition will be heard, and requiring them to appear and answer the same.

SEC. 3. *Be it further enacted*, That when the persons entitled to notice by the second section of this act are non-residents of this State, such notice must be given by publication in a newspaper for four consecutive weeks, and if their residence is known, by sending to them a paper by mail (postage paid) containing said publication, with black lines drawn around the notice.

SEC. 4. *Be it further enacted*, That when service is perfected as is hereinbefore provided, and such service is fully proven, the Court must appoint a guardian *ad litem* for the infant defendants to said petition, and for such lunatic and person *non compos mentis*, who shall not be of kin to such petitioner, and who must file an answer denying the allegations of said petition, which answer shall not be sworn to; and no decree must be rendered for such sale until the allegations of the petition are proven by the testimony of at least two creditable persons, to be taken as in Chancery cases, and filed with the papers in the case.

SEC. 5. *Be it further enacted*, That when a decree for the sale of land is made under the provisions of this act, the Court must order the administrator or guardian, as the case may be, to sell said land, after advertising the same, for at least thirty days, to the highest bidder, for cash or on time, as the Court by its decree may direct. If said land is sold for cash, the administrator or guardian, must, upon the payment of the purchase money, make the purchaser such title as the intestate, infant, lunatic, or person *non compos mentis*, (as the case may be) had to the land sold; and if sold on time, such title must be made, on the payment of the purchase money, and not before.

SEC. 6. *Be it further enacted*, That when such sale is made on time, the notes for the purchase money must be made payable to the administrator or guardian, as the case may be, who must within thirty days after the sale, make return to the proper Court, of all their acts and doings under such decree.

SEC. 7. *Be it further enacted*, That where money is invested in real or personal estate under the provisions of this act, the guardian or administrator, must return to the Court making the order, an inventory, under oath, of the property so purchased.

SEC. 8. *Be it further enacted*, That when a petition is filed, under this act, and the prayer is refused, the petitioner must pay all costs; if the prayer is granted, the costs must be paid out of the effects of the intestate, infant, lunatic or person *non compos mentis*, as the case may be.

SEC. 9. *Be it further enacted*, That for the services rendered by a Judge of Probate under this act, he shall receive a fee of five dollars in each case and no more.

SEC. 10. *Be it further enacted*, That it shall not be lawful for any Judge of Probate in this State, to act as guardian for any minor, idiot or lunatic, in the county in which he may be Judge; and in cases where there are two or more applicants for letters of guardianship, by persons equally related, he shall appoint that person, who in his opinion will best manage the estate of the ward.

Approved, January 31, 1852.

## AN ACT

Relating to the appointment of Guardians in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That whenever a petition shall be presented to any Judge of Probate in this State, praying the appointment of a guardian for the property or estate of any person, setting forth on oath, that such person is lunatic or *non compos mentis*, and that he has been so declared by a competent tribunal of the State in which he resides, and that he resides out of this State, and has property or estate in the county where the petition is preferred, requiring the care of a guardian, the Judge of Probate of such county, shall have jurisdiction of the case, and shall order and give notice, as is now provided for non-resident defendants in Chancery; and after such notice has been given, the said Judge having first appointed a guardian *ad litem* whose duty it shall be to deny all the allegations of the petition, may proceed to hear the cause upon the proof, and if satisfied that the proof sustains the petition, may appoint some suitable person guardian of the property and estate of such lunatic or *non compos mentis*, which is or may be within this State; and such guardian shall give bond and have the same powers, as to such property and estate, and be subject to the same liabilities, as are provided for guardians otherwise appointed, and shall account in the same way.

Approved, February 5, 1852.

## AN ACT

To authorize the Judges of the Probate Court to correct mistakes in their Courts, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That where lands have been, or may hereafter be sold by a decree of the said Court, or of the County Court, and said sale has been made *bona fide*, and possession shall accompany said sale, and it shall be made appear to the satisfaction of said Court, that there has been a mistake in describing said land by its numbers, on the application of the purchaser, or those holding under him or her, it shall be the duty of the said Judge to summon the administrator of the deceased, or the representative of said administrator, to appear on a day appointed, and show cause why he should not be decreed to make title to said land.

SEC. 2. *Be it further enacted,* That on the day set apart for the hearing of said cause, if the facts set out in the first section of this act, shall be established to the satisfaction of said Judge, he shall decree a title to be made by such administrator or his representative.



SEC. 3. *And be it further enacted*, That when any administrator or executor, shall apply to said Court for a decree to sell real estate, the production of the patent or deed shall be sufficient evidence to authorize the Court to proceed and hear said application.

Approved, February 9, 1852.

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#### AN ACT

To extend the jurisdiction of the Probate Court.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That from and after the passage of this act, whenever it is made to appear to the satisfaction of the Court that any slaves are owned jointly by minors, and that the same cannot be equitably divided without a sale thereof, it may be lawful for the guardian or guardians of such minors to petition the Probate Court for an order to sell a portion or all of said slaves for the purpose of a division.

SEC. 2. *Be it further enacted*, That upon the filing of said petition the Court must appoint a day for the hearing, not less than thirty days from the filing of the petition, and appoint a guardian *ad litem* for said minors to represent them on the hearing of the petition.

SEC. 3. *Be it further enacted*, That upon the hearing of the petition, if the Court is satisfied from the proof that said slaves cannot be equitably divided, it shall make an order that the same be sold at public sale; the sale to be conducted in all respects as sales by executors and administrators. Fees to be the same as for like services in cases of executors and administrators.

Approved, February 18, 1854.

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#### AN ACT

To modify Sections seventeen hundred and forty-nine and seventeen hundred and sixty-four of the Code.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That hereafter sales of real property and slaves, by executors, administrators and guardians shall be held at such place in the county as the Judge of Probate may in his discretion direct.

SEC. 2. *Be it further enacted*, That section seventeen hundred and forty-nine of the Code, be and the same is hereby repealed; and section seventeen hundred and sixty-four of the Code be so far amended as to conform to the first section of this act.

SEC. 3. *And be it further enacted*, That the provisions of this act shall not apply to Mobile county.

Approved, November 19, 1853.

## AN ACT

To amend the fourth division of section seventeen hundred and thirty-eight of the Code of Alabama.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That section seventeen hundred and thirty-eight of the Code of Alabama, be amended by adding the following to the fourth division of said section, viz : Also, one gun, one man's and one woman's saddle, three cows and calves, twenty head of sheep, thirty pounds of wool, twenty head of hogs, one thousand pounds of fodder, one work horse or mule, or pair of oxen, one horse or ox cart or wagon, two plows and plow gear and two hoes.

SEC. 2. *And be it further enacted,* That the property enumerated in the aforesaid amendment to the fourth division of said section seventeen hundred and thirty-eight, shall be retained, used and employed by the families of testators and intestates, in the same manner and under the same conditions that the other property mentioned in said section is directed to be retained, used and employed by such families.

Approved, February 7, 1854.

## AN ACT

Giving the Courts of Probate jurisdiction to compel the administrator or executor of a deceased executor, administrator or guardian, to settle the accounts of his testator or intestate, as the case may be.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That the Courts of Probate of this State, shall have power in all cases, wherein letters of administration shall have been granted in any county in this State, on any intestate's estate, to any person or persons, or where letters testamentary or of guardianship shall have been granted to any person or persons, such person or persons shall have died, without having previously settled his, her or their administration, executorship or guardianship as the case may be, with the Orphans' or Probate Court of the county granting the same, to compel the executor or executors, administrator or administrators of such deceased executor, administrator or guardian, to make settlement of the administration, executorships or guardianships of his, her or their intestate or testator, as fully and completely, as his, her or their testator or intestate might or could have done while living.

SEC. 2. *Be it further enacted,* That the Probate Court of that county in which were granted such letters testamentary of administration or of guardianship, to such deceased executors, administrators or guardians, shall have jurisdiction to compel the executor or executors, the administrator or administrators, of any such

deceased executor, administrator, or guardian, to make settlement as provided for in the first section of this act, although such executor or executors, administrator or administrators, may have received their appointment as such, from the Orphans' or Probate Court of another and different county in this State.

SEC. 3. *And be it further enacted*, That the executor or administrator subjected by this act, to account, shall be, and is hereby made liable to account, either with the distributees, legatees, creditors or administrator *de bonis non*, or executors with the will annexed, of his testator or intestate: *Provided*, such executor, administrator or guardian, shall only be liable for the assets that that may come into his hands.

Approved, February 7, 1854.

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#### AN ACT

To regulate the sale of real and personal property by executors and administrators.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened*, That sections seventeen hundred and forty-four, seventeen hundred and forty-six, seventeen hundred and fifty-seven, seventeen hundred and sixty-two, seventeen hundred and ninety-seven, eighteen hundred and seventy-two of the Code of Alabama, be so amended, or altered, as to leave it to the discretion of the Judges of Probate on the application of any executor or administrator to sell the real or personal property or any part thereof, of their testator or intestate, by an order for that purpose, to require notice of such application, and sale, to be given by advertisement in some newspaper, to be designated by him, for three successive weeks, or by posting up advertisements at the Court house door and three other public places in the county where such application is made.

SEC. 2. *Be it further enacted*, That no application for the sale for any purpose of the lands of deceased persons shall be acted upon by any Judge of Probate, unless such application shall conform to the requirements of section eighteen hundred and sixty-eight of the Code.

SEC. 3. *Be it further enacted*, That the duties required of the Judge of Probate by section eighteen hundred and sixty-nine, eighteen hundred and seventy, eighteen hundred and seventy-one and eighteen hundred and seventy-two of the Code, be, and the same are hereby extended to each and every application for the sale of lands of deceased persons, whether the proceedings be had under section eighteen hundred and sixty-seven, or seventeen hundred and sixty-four, or seventeen hundred and fifty-five of the Code.

SEC. 4. *Be it further enacted*, That the persons who may be appointed by the Probate Judge under section eighteen hundred and sixty-nine of the Code, to represent the minors or persons of unsound mind, shall deny in writing, the allegations contained in the application of the executor or administrator, and if necessary shall employ counsel to defend the interests of those he represents. The person so appointed by the Probate Judge shall not be the petitioner or of kin to the petitioner.

SEC 5. *And be it further enacted*, That no order for the sale of land belonging to any estate, shall be made when there are minors, or persons of unsound mind, interested in such estate, unless the Probate Court shall have taken proof by deposition, as in Chancery proceedings, showing the necessity of such sale, and this proof shall be taken whether the allegations in the petition are denied or not, by the guardian or other person appointed by the Court to represent the minors or persons of unsound mind, and any order of sale, and sale made without a compliance with the requisitions of this act, shall be wholly void.

Approved, February 7, 1854.

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#### AN ACT

To amend Section two thousand and twenty-nine of the Code of Alabama.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That section two thousand and twenty-nine of the Code of Alabama be so amended by inserting the words, bonds, notes, or bills of exchange at interest on mortgage security, or between the words "re-investment in" and "other property," where they occur in the third and fourth lines of said section.

Approved, February 11, 1854.

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#### AN ACT

To amend Section eighteen hundred and five of the Code, in relation to annual settlements.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That so much of section eighteen hundred and five of the Code of Alabama, as requires the notice upon the annual settlement of executors, administrators and guardians to be published in a newspaper, is hereby repealed: *Provided*, This act shall not apply to the counties of Mobile, Montgomery and Sumter.

Approved, February 16, 1854.

## AN ACT

To authorize the sale of personal property for distribution.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the whole or any part of the personal estate of any decedent, may be sold to make distribution among the heirs at law, legatees or distributees, as the case may be, on the order of the Court of Probate having jurisdiction, on the application of the executor or administrator, unless power is conferred by the will to sell such property for that purpose.

SEC. 2. *Be it further enacted,* That every such application shall be made, and notice thereof given, and the proceedings thereunder conducted, and all sales thereunder advertised and made in the mode and manner required by law when application is made to sell the personal property of any decedent, for the payment of debts.

SEC. 3. *And be it further enacted,* That the several Courts of Probate, of this State, shall have power to order the sale of personal property, liable to waste, or of a perishable nature, belonging to the estate of any deceased person whenever it shall appear by proof upon the application of the representative of any such deceased person, that such such sale would be beneficial to the interests of such estate.

Approved, February 16, 1854.

## AN ACT

For changing the venue in issues pending in the Probate Courts.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That all laws now in force providing for the change of venue in cases where the validity of a will is contested before the Probate Courts, shall apply to all issues now pending or which may hereafter arise in the Probate Courts, where a jury may be called to try contested facts; and the Circuit Courts to which such trials have been or may be removed, must proceed to try the same under the regulations now in force as to the trials of the validity of wills.

Approved, February 17, 1854.

## AN ACT

To repeal and amend certain Sections of the Code, therein named, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That so much of section sixteen hundred and forty-five, of the Code,

relating to contesting the validity of wills, when an order is made, removing the trial to another county, as requires the "Judge of Probate to transmit the will, subpoenas and all other papers belonging, and a transcript of all the entries relating thereto, to the clerk of the Circuit Court of the county to which it is ordered to be removed," be, and the same is hereby repealed.

SEC. 2. *Be it further enacted*, That sections sixteen hundred and forty-six and sixteen hundred and forty-eight of the Code, be, and the same are hereby repealed.

SEC. 3. *Be it further enacted*, That when an order is made removing the trial, contesting the validity of a will, to another county, the Judge of Probate must transmit the will, subpoenas and all other papers belonging, and a transcript of all the entries relating thereto, to the Judge of the Probate Court of the county to which it is ordered to be removed; and which said Judge of Probate shall have full jurisdiction, and shall proceed to try the case in the same manner, as is prescribed for the Judge of Probate of the county from which it has been removed.

SEC. 4. *And be it further enacted*, That if the judgment is rendered in the Probate Court, to which it has been removed, and no appeal is taken within thirty days thereafter, such judgment must be certified by the Judge of such Probate Court, and the will returned to the Probate Court from which the trial was removed; and the will must be probated or rejected in such Probate Court, as such judgment may be for or against the validity of the will.

Approved, February 17, 1854.

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#### AN ACT

To amend the laws in relation to Insolvent Estates.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened*, That it shall not be necessary for any administrator *de bonis non*, who may succeed any executor or administrator in the management of the estate of any deceased person, which has been previously declared insolvent by the Court having jurisdiction of such estate, to institute proceedings to have such estate declared insolvent anew, and that whenever any estate of deceased persons shall have been, or may hereafter be declared insolvent, by the proper Court having jurisdiction, during the administration of any executor or administrator thereon, such declaration of insolvency, so long as it remains unreversed, shall continue and apply to all subsequent administrations upon said estate, as effectually as if declared insolvent under each of such subsequent administrations, any law, usage or custom, to the contrary notwithstanding.

Approved, February 18, 1824.

## AN ACT

To authorize Executors or Administrators, upon application to the Probate Court, to dispose of Land Warrants.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, in all cases where any person dies, and leaves any land warrant or warrants undisposed of, either by assignment, transfer, or by locating said warrants, or in any other manner, the executor or administrator of such decedent, may make application to the Probate Court to sell said warrant, either for payment of debts or for a distribution.

SEC. 2. *And be it further enacted,* That the law regulating the application and sale of personal property in like cases, shall govern and control cases of this description, so far as the same may be applicable.

Approved, February 18, 1854.

## AN ACT

To amend Section one thousand eight hundred and seventy-two of the Code.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That section one thousand eight hundred and seventy-two of the Code, be so amended, that the Court of Probate shall have power to order a sale of the lands on a credit not exceeding three years.

Approved, December 19th, 1855.

## AN ACT

To allow Executors and Administrators discretionary power in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, executors and administrators shall have the right and power to compromise and settle all bad and doubtful debts and claims, owing or belonging to the estate of which said executor or administrator is the representative: *Provided,* That such executor or administrator shall before he compromises or settles such debt or claim, make application to the Probate Court of the county which granted his letters of administration, for an order to make such compromise or settlement, and said Probate Court on satisfactory proof, that it will be to the interest of the estate so to compromise or settle, shall grant an order to that effect to said executor or administrator.

SEC. 2. *Be it further enacted,* That in all applications under the first section of this act, the same notice shall be given, and in the same manner, and to the same extent as is now or may

hereafter be required in the final settlements of estates by executors and administrators.

Approved, February 1, 1856.

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#### AN ACT

To amend Section two thousand six hundred and seventy-seven of the Code, in relation to the Partition of Land.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That section two thousand six hundred and seventy-seven of the Code of Alabama, be so amended as to give the Judge of Probate jurisdiction for the partition of lands, though some of the parties interested are minors; and upon such application where any of the parties interested are minors, the Judge of Probate shall appoint guardians *ad litem* for such minors: *Provided,* That before granting any application under this act, the said Judge of Probate must be satisfied by evidence taken, as in Chancery cases, that it is to the interest of such minors, that such partition be made.

Approved, February 15, 1854.

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#### AN ACT

To amend the Act Approved, February 15, 1854, and to extend the jurisdiction of the Probate Courts, of the several counties in this State.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That section two thousand six hundred and seventy-seven of the Code of Alabama, and the act approved, February 15, 1854, be so amended as to give the Judges of the Probate Court in the several counties in this State, full jurisdiction and authority to decree and order a sale of all property, whether the same be real, personal or mixed, held by joint owners or tenants in common, when the same cannot be equitably partitioned and divided between such joint owners and tenants in common; and this act shall extend to and include all such cases, when the property to be partitioned is held and owned by parties of adult age, or, when some are of full age, and others are minors or persons of unsound mind, or when they are all infants or persons of unsound mind.

SEC. 2. *Be it further enacted,* That upon the petition or application in writing of any of the parties in the first section of this act mentioned, his or their guardian or other lawful representative, setting forth that such property cannot be equitably partitioned or divided without a sale of the same, the Judge of Probate



shall upon the filing of such petition, appoint a day for the hearing of the same not less than thirty days from its filing: All parties shall have at least ten days notice of the time and place set for the hearing of such application; and in cases where infants or persons of unsound mind are parties, guardians *ad litem* must be appointed by the said Court.

SEC. 3. *Be it further enacted*, That upon the hearing of such application, if the Judge of Probate shall be satisfied from the proof, that the property thus held and owned in common, cannot be equitably partitioned and divided among all the parties in interest, he shall decree the same to be sold, and make and issue all such orders as may be necessary to effect the sale thereof; to appoint suitable commissioners, not more than five, any three of whom may act; and the same shall be conducted in all respects as is done, when property, in the hands of an executor or administrator, is to be distributed.

SEC. 4. *Be it further enacted*, That if any of the parties in interest are non-residents, whether they be adults, minors, or persons of unsound mind, they shall be made parties in the same manner and to the same extent as is done, when property, in the hands of an executor or administrator, is to be divided or distributed; and all laws now in force, or that may hereafter be enacted, making non-residents parties in the division and distribution of property, in the hands of executors and administrators, shall apply to all applications under and by virtue of this act.

SEC. 5. *Be it further enacted*, That before granting any application under this act, the said Judge of Probate must be satisfied by evidence, taken as in Chancery cases, that an equitable partition or division cannot be made: and when the application is by the guardian of any one or more of the infants or persons of unsound mind, the Judge of Probate must not only be satisfied, that such property cannot be equitably divided, but that it would be to the interest of such infants or persons of unsound mind, to sell the same for the purpose of partition and division.

SEC. 6. *Be it further enacted*, That in the event any of the parties interested in property, whether the same be real or personal, held in common, should die, then in that event, the provisions of this act shall fully apply to his or her executor or administrator.

Approved, February 5, 1856.

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#### AN ACT

In respect to the Guardianship of the property of non-resident Minors.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the Judges of Probate Courts in this State have authority and

power to appoint guardians of the estates or property in this State, of minors who reside out of the State, which authority and power, are to be exercised in the case of any such minor or minors, by the Judge of Probate of the county in which the estate or property or a part thereof shall be : *Provided*, That not more than one appointment of a guardian or guardians for the estate or property wherever it may be in this State, of any one, minor, shall be made or be in force at the same time.

SEC. 2. *Be it further enacted*, That upon petition by any such guardian or guardians, to the Probate Court of the county, in which such appointment may be made, and proof showing that the wants or the interests of the minor or minors require that all or any part of the estate or property aforesaid should be sold in this State, such Probate Court shall have power to authorize the sale or sales, and the reinvestment of the proceeds thereof to be made according to the law now in force, in respect to the sale and reinvestment of the property of minors, who reside in this State ; or the Court may order the proceeds of any such sale or sales, to be delivered over to the guardian appointed in the State in which his ward or wards reside : upon a compliance by such guardian with section two thousand and thirty-three of the Code of Alabama.

Approved, February 14, 1856.

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#### AN ACT

To regulate the distribution of property in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened*, That when one or more of the heirs of any deceased intestate shall have received property of the ancestor in his lifetime by way of advancement, and shall wish to bring the same into hotchpot, or if it be alleged by any one in interest that any other heir has so received advancement, and such heir so alleged to have received advancement, shall claim his distributive share of his or her ancestor's estate, and the parties cannot agree as to whether such advancement had been received by such heir, or as to the value of the same, the matters in issue shall be determined by the Probate Judge, upon proof, as in other cases, unless a jury to try such issue be required by one of the parties in interest ; but if a jury be so required, then the issue or issues shall be made up in writing under the direction of the Probate Judge, and a jury empanelled to try the cause as in other cases in the Probate Court ; and judgment given accordingly ; but either party may appeal to the Supreme Court, as in other cases, from the judgment of such Probate Court.

Approved, February 15, 1856.

## AN ACT

## Concerning Bail in Criminal Cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Judges of the Circuit Courts shall have power in term time, to fix the amount of bail on all felonies pending in said Courts, and by order, direct the sheriff to take bonds accordingly in vacation.

SEC. 2. *Be it further enacted,* That the Judges of the Probate Courts of this State, are authorized to admit to bail in all such cases, and in like manner as the Judges of the Circuit Courts, and Chancellors are now authorized to do, except for felonies punished capitally, or by imprisonment in the penitentiary for life, murder in the second degree, and manslaughter in the first degree. This act does not extend to cases not bailable.

Approved, February 15, 1856.

# INDEX.



## ACCOUNT—

Petition for settlement of, by special administrator, (see note)	81
Of special administrator	83
Report of, as to sale of perishable property	103
Order to record such report and account	104
As to what said account should contain, (note)	104
Report of, as to private sale of crop	106
Order to record same	106
As to form of report of account sales or sale of negroes to pay debts, (note)	113
Statement of, by Judge when representative fails, after his removal	170
Order finally passing such	172
Petition by administrator de bonis non that representative of deceased representative be required to account	174
Order to hear such petition	178
Representatives answer to such petition	179
Order setting day to settle such account	180
Final order on such account	182
Order by the Court that representative be cited to file his accounts	185
Revocation of letters for failure to file,	185
Order for attachment for failure to file	186
Process of attachment for such failure	187
Order setting day to make partial settlement of,	188
Order passing annual or partial,	189
Statement of represent've for settlement of, &c. and his acc't	190
Forms of schedules for settlement	203, 205, 206
Order setting day to make final settlement of	206
Decree upon, for final settlement	208
Decree upon the account of administration when estate is declared insolvent and continuing same administrator	223
Petition by administ'tor for day to settle insolvent estate, &c.	228
Order upon such petition, &c.	229
Order passing such, &c.	230
Showing dividend on claims	236

## ACCOUNTANT—

Reference of claims to, &c.....	230
Report of, upon reference as to dividend due upon claims allowed against insolvent estate.....	236

## ACKNOWLEDGEMENT—

Of deed of a representative.....	142
----------------------------------	-----

## AD LITEM—Guardian. See Guardian.

## ADMINISTRATOR—

Order to cite to show cause, why letters should not be granted to an executor whose disability has been removed....	45
Order joining with petitioner.....	46
Bond of.....	49
Notice of his appointment to be published.....	55
Order to, to show cause on failure to fill an inventory in time,	55
Order to attach on such failures—(see note).....	56
Order to remove “ “.....	57
General, his petition showing an estate not administered upon	70
General, petition for letters for a single purpose.....	73
Petition for letters of, in the usual form.....	78
As to requisite age of, (note).....	78
Special, final account of.....	83
In chief, to have notice of settlement of special administrator	84
Special, decree on his account and judgment in favor of his successor for balance.....	84
General, petition for allowance to be paid by his bondsmen..	86
Order setting day to hear such petition.....	87
Petition by, for leave to keep the estate together.....	90
Order granting such authority to.....	91
Report of, showing investment of money.....	96
Petition that he may be required to give additional security.	159
Appointment of, on removal of a former.....	167
Petition to revoke letters of, on his removal from the State..	168
Order setting day to hear such petition.....	168
Order for removal of.....	169
Statement of accounts by Judge on failure by, after his removal.....	170
Final order passing such account.....	172
Petition of administrator de bonis non for an account by the representative of the deceased representative.....	174
Order to hear such petition.....	178
Representative's answer to such petition.....	179
Order setting day to settle such account.....	180
Final order on such account.....	182
Order by the Court that he be cited to file his accounts....	185
Revocation of letters for failure to file accounts.....	185

Order to attach for failure to account.....	186
Process of attachment in such case.....	187
Statement of, for settlement and distribution.....	199
No extra compensation allowed to, unless, &c., (note).....	201
Order setting day to make final settlement of accounts of...	206
Order that he settle when estate declared insolvent.....	222
Decree passing his accounts and continuing him.....	223
Order to cite, of insolvent estate to make distribution.....	227
Petition that he may convey land, deceased having agreed in writing, to do so, (and note p. 270).....	268
Answer of, to such petition.....	270
Order that he may convey, (and note p. 272).....	271
See General Administrator.	

## ADMINISTRATION—

Will discovered after commencement of.....	39
Such will annexed to, on failure of executor to apply for let- ters.....	43
Special, for single purpose, (note).....	50
Grant of, to general administrator upon his petition, or by the Court.....	71
Petition of third person to have, cast upon general adminis- trator.....	71
Committed to general administration upon petition of third person.....	72
Cast upon general administrator for a single purpose.....	74
Petition for special letters of.....	76
Special grant of.....	77
Order granting.....	79
Renunciation of right to, (note).....	79
Petition to settle by special administrator, (see note).....	81
Account for settlement of special.....	83
Special, order setting day for settlement of.....	84
Special, decree on settlement of.....	84

## ADOPTING—Declaration legitimating, child, and..... 292

AD QUOD DAMNUM—See Dam, Mill, Writ, Petition, Orders,  
Jury, Inquisition, &c.

Notice to person whose property may be injured..... 314

ADVERTISEMENT—See Notice. See Publication.

AFFIDAVIT—See Oath.

Discharge from arrest for non-production of will on making.	21
Ordinary form of, to prove a will.....	32
To inventory, must be made before Probate Judge, (note)...	59
Of appraisers to appraisement.....	60
In proof of notice and publication.....	123
Oath to claim against estate.....	225

As to sale of slave by auctioneer, broker or agent.....	302
To be made by an applicant before retail license issued....	303
To obtain possession of slave when run away.....	310

#### ALLOWANCE—

Petition of general administration for, out of bond given him	86
Order setting day to hear such petition.....	87
Order for, to general administrator to be paid by his bondsmen.....	88

ALLEGATIONS—For contest of will.....	30
--------------------------------------	----

ALLOTMENT—Decree of, &c., for dower.....	64
--	----

#### AMENDMENT—

As to place of sale of personal property designated in former order.....	108, 109
Petition for, nunc pro tunc, as to name of party.....	143
Order setting day to hear such petition.....	145
Citation on such order, (note).....	146
Order that, be made.....	146
Petition for, by purchaser as to number of land.....	148
Order for, on last petition.....	149

#### ANSWER—

Of representative to citation to file an inventory, or show cause.....	57
Of representative to petition that he be compelled to make title to land under agreement of deceased.....	270

#### APPRENTICE—

Form of articles when made with the Judge, when parents are unable to provide support.....	290
Order of Court apprenticing minor in other cases.....	291

#### APPRAISERS—

Order setting aside first, and appointing new,.....	50
Notice to,.....	52
Appointment of,.....	54, 79
Must swear to appraisement.....	60

#### APPRAISEMENT—

Order made upon the coming in of.....	51
Order that it be made.....	54
Inventory should be filed before, made (note).....	59
Form of, and affidavit.....	60
Of land exempted from sale for the use of the widow and children.....	156

#### APPLICATION—See Petition.

#### APPEAL—

Bond for.....	266
Citation upon an.....	267

ASSIGNMENT—Of dower by heir.....	266
ATTESTATION—Of renunciation of executor (note)...	38
ATTACHMENT—	
Order for, on failure to produce will.....	19
Process of, for non-production of will.....	20
Order of discharge from.....	21
Order to representative to show cause why, should not issue for failure to file inventory.....	55
Order to issue on such failure.....	56
Answer of representative to citation to show cause why he should not be attached or removed for want of inventory..	57
Order for, to compel settlement.....	186
Form of, in such case.....	187
BASTARD.—See Adopting. Legitimation.	
BOND—	
Form of, framed to suit executors, administrators and guar- dians.....	49
Petition for letters testamentary when no bond is required..	53
Grant of letters testamentary without.....	54
To general administrator when administration is cast upon him	75
Petition of general administrator to have his fees and allow- ances paid by bondsmen.....	86
Petition that representative be required to give additional..	159
Order to hear such petition, (see note).....	160
Order approving additional bond.....	161
Order requiring additional bond.....	162
Order “ “ “ made by the Court of its own motion.....	163
Petition for discharge from, by surety of representative....	164
Order setting day to hear such petition.....	165
Order requiring a new bond.....	165
Order removing representative when he fails to give security as required.....	166
Refunding, under order of partial distribution and as to legacy.....	194
Petition by surety of guardian for discharge from, (see note)	265
For an appeal.....	266
Of officers.....	299
Petition by surety in an official, for his discharge.....	300
Citation under such petition.....	301
Required on issuing license to marry.....	305
CAPTION—Form of, to deposition.....	35
CERTIFICATE—	
Of probate of will to be thereon endorsed.....	33
As to the various kinds of, (see note).....	33



To deposition.....	35
By magistrate, of nomination of guardian by minor.....	252
Of limited partnership.....	296
Of Judge of Probate as to official character of Justices, Notaries, &c.....	301
Certificate upon execution issued by a magistrate when to be executed in another county.....	302
Of marriage.....	306
Of Judge to tax book for tax collector.....	310

CHILD—See Heir.

#### CITATION—

To administrator in chief on settlement of special administrator, (see note).....	84
To obligors in bond to general administrator as to fees, &c., to be paid obligee, (note).....	88
(As to length of notice by, upon petition to sell lands to pay debts or for division, see errata.)	
Order to cite representative to enquire as to amount of dower upon petition of widow for allowance out of proceeds of sale.....	133
To representative to show cause why land worth \$500 should not be set off for the use of the family and be exempted from sale, (note).....	153
Requiring representative to show cause why he should not give additional bond, (note).....	160
Same, when Court without petition requires additional security, (note).....	163
Upon petition of surety of representative to be discharged from the bond.....	165
Of sureties of deceased representative on settlement of accounts, (note).....	178
Order by the Court that representative be cited to file his accounts.....	185
On petition of legatee or heir for legacy or distribution, (note)	192
Order for, to administrator of an insolvent estate to make distribution.....	227
Upon an appeal.....	267
Upon application to sell lands, when same cannot be equitably divided among joint owners, (note).....	283
Citation requiring principal in an official bond, to give a new bond on application of his surety.....	301
To person whose property may be injured, to show cause why petitioner should not be permitted to erect his dam..	314

#### CLAIMS—

Petition for leave to compromise debt or, as bad or doubtful.	98
Order for day to hear such petition.....	99
Order authorizing compromise of.....	100

Oath to, against an insolvent estate.....	225
Objection to.....	226
Issue to try, (note).....	227
Order fixing day to try such issue.....	229
Decree, upon, &c.....	230, 231, 232, 233, 234, 235
Report of accountant as to amount to be paid on.....	236
Order ascertaining and adjudging amount of dividend.....	237
See Debt.	

### COMMISSION—

To take testimony.....	34
To take testimony—mode of executing, (note).....	35, 36, 37
To make distribution of personal property.....	213
To make division of land between joint owners where same cannot be equitably divided.....	286

### COMMISSIONER—

Decree directing the summons of, to allot dower.....	64
Writ for the summons of.....	66
Sheriffs' return thereon.....	67
Their return as to dower.....	68
Order to appoint, to make distribution of personal property.....	212
Report of, as to distribution.....	214
Nomination of, to make partition of land between adult joint owners.....	274
Such nomination confirmed.....	276
Return of, as to partition.....	277
Appointment of, to sell lands when it cannot be equitably divided.....	285
Notice of sale in such case.....	287
Report by, of such sale.....	288
Confirmation of such sale.....	289

### COMPROMISE—

Petition for leave to, where debt or claim is bad or doubtful.....	98
Order for day to hear petition.....	99
Order authorizing.....	100

### CONFIRMATION—

Of return of dower, commissions, &c.....	68
Order setting day to take proof as to, touching the sale of land, the report being adverse to sale.....	126
Order of confirmation in such cases on hearing the proof... ..	127
Order of, as to sale of land, the report of sale being favorable .....	130
Of action of representative in setting off land for the use of widow and children and exempted from sale.....	156
Order of, as to distribution of an estate made by commissioner .....	215
Of appointment of commissioners to partition land held jointly.....	276
Of sale, &c., made by such commissioners.....	289

**CONSENT—**

To sale of dower by widow.....	131
To marriage of minor by parent or guardian.....	304

**CONTEMPT—**

Order of attachment for,.....	19
Attachment for,.....	20
Order to representative to show cause why he should not convey as ordered, or be attached for,.....	140

**CONTEST—**

Allegations for, as to will.....	30
Form of proof of will when no contest.....	32
As to will, what proof to be recorded, (note).....	33

**CONVEYANCE—See Deed.****CREDITOR—**

Petition of, to revoke letters upon the removal of representative from the State.....	168
Notice to, when report of insolvency filed.....	221
Oath of, to his claim against an insolvent estate.....	225
Decree, as to claim of, &c.....	230
Report as to amount to be paid,.....	236
Order that dividend be paid to.....	237

**CROP—**

Petition to sell, at private sale.....	105
Order granting such petition.....	105
Report of such sale.....	106
Order to record such report.....	106

**DAM—**

Petition to erect, and mill on a non-navigable stream.....	311
Writ to sheriff requiring him to summon jury in such case..	312
Verdict of such jury.....	313
Order granting such petition.....	314

**DAY—**

Order setting, to hear petition to compel production of will..	18
--	----

**DEBT—**

Petition to compromise claim or, when bad or doubtful.....	98
Order for day to hear such petition.....	99
Order authorizing compromise of.....	100
Petition to sell personal property, other than negroes, to pay,	107
Order for such sale.....	108
Petition to sell slaves to pay,.....	110
Setting day to hear petition.....	111
Order authorizing such sale.....	112
Petition to sell lands to pay,.....	114
Petition to sell lands instead of slaves, to pay, (note,)...	114, 115

Petition, where there is a will, to sell lands to pay, (note 3).	115
Order to hear such petition, &c.....	118
(As to time of notice of such hearing see table of errata.)	
Petition of guardian of lunatic, &c., to sell the real rather than the personal property, to pay debts and for maintenance, (and note p. 254).....	255
See Claim.	

#### DECLARATION—

Legitimizing and adopting child.....	292
--------------------------------------	-----

#### DECREE—

Ordinary, granting letters testamentary.....	48
Allowing dower, &c.....	64
Of confirmation and recording proceedings, &c. in dower....	68
On the account of special administrator and judgment for bal- ance to his successors.....	84
Ordering sale of lands for division or to pay debts.....	121
Of Judge, stating representative's account after his removal, See Orders.	170

#### DEED—

Prayer for leave to convey lands, the purchase money being paid, (note).....	125
Another form for same.....	136
Order to make.....	136
Petition for, by purchaser, when representative fails to act..	138
The like, when a representative fails or refuses to comply with an order of Court,.....	139
Order to representative to show cause why he should not con- vey as ordered, or to be attached.....	140
Form of, by representative.....	141
Acknowledgment of, by representative.....	142
Probate of, when attested by two witnesses.....	143
Order that representative make, of land estimated and set off for widow and children.....	156
Form of, in such case.....	157
Petition for conveyance of land by representative upon writ- ten agreement of deceased.....	268
Order that representative make, (and notes p. 272).....	271

#### DEPOSITION—

Form of commission.....	34
General rules as to, (note).....	35
Form of caption to.....	35
Mode of taking testimony by.....	36
Directions for taking, (note).....	37

#### DISABILITY—

Being removed petition for letters by executor named in the will.....	44
--	----

**DISCOVERY—**

Of will after administration commenced..... 39

**DISSENT—**

From will by widow..... 60

**DISCHARGE—See Security.****DISTRIBUTION—**

Petition to sell lands to make, of an estate..... 116

Such petition in case there is a will..... 117

Order to hear such petition..... 118

(As to length of notice of such hearing see table of errata.)

Decree to sell lands for..... 121

Petition of heir for, of his inheritance..... 191

Order of hearing on such petition..... 192

Order as to partial, (note)..... 194

Refunding bond required under such order..... 194

Petition to sell slaves for,..... 195

Order for hearing such petition..... 196

Petition to sell personal property, other than slaves for, (and  
see note)..... 198

Statement of representative for settlement, and..... 199

Decree for final settlement and various forms for distribution, 208

Commission to make distribution of personal property..... 213

Report of commissioners as to,..... 214

Order confirming..... 215

Order to sell for, conformably to report of commissioners.... 216

Order for, after final settlement..... 217

Order to cite administrator to make, as to insolvent estate.. 227

Petition for day to make settlement and, in case of insolvent  
estate..... 228

Order setting day to hear such petition..... 229

Decree upon claims against insolvent estate and ordering, &c. 230

Report as to amount of dividend to be paid on claims..... 236

Order that dividend be paid creditor..... 237

**DIVISION—See Distribution.****DOWER—**

Petition for..... 61

Order setting day to hear petition—(see order p. 118–19)... 63

Suggestion of marriage pending petition for..... 64

Decree allowing, &c..... 64

Summons for commissioners to allot..... 66

Sheriff's return thereon..... 67

Return of commissioners as to..... 68

Confirmation of, and recording proceedings in,..... 68

Consent by widow to sale of..... 131

Order of sale of.....	132
Petition for allowance of, out of the proceeds of sale.....	132
Order to cite representative on filing petition for allowance of, by widow, out of proceeds of sales.....	133
Order fixing, in proceeds of sale.....	134
Assignment of, by heir.....	266
<b>EDUCATION</b> —Petition by guardian to sell property for, &c.,.....	259
<b>EMANCIPATION</b> —	
Petition for, of slave.....	308
Order granting such petition.....	309
<b>ENDORSEMENT</b> —	
Of probate upon will.....	33
Upon magistrates execution when it is to be executed in ano- ther county.....	302
<b>ESTATE</b> —	
Appraisement of.....	50
Entry of appraisement.....	51
Inventory of,.....	51
Entry of,.....	51
Supplemental inventory of, and entry.....	52
Order for inventory, &c. of, when same is not returned with- in proper time.....	55
Order to attach or remove representative in such case.....	56
Not administered upon, petition of general administrator....	70
Petition by representative for leave to keep the, together...	90
Order granting such petition.....	91
Petition to invest accumulations of.....	92
Order for hearing such petition.....	94
Order authorizing such investment.....	95
Petition to sell crop at private sale.....	105
Order authorizing such sale.....	105
Petition to sell land to divide.....	116
Petition in such case if there is a will.....	117
Order to hear such petition.....	118
(As to length of notice of such hearing, see table of errata.)	
Petition of heir for partial distribution of,.....	191
Order of hearing on such petition.....	192
Order granting such petition, (note,).....	194
Refunding bond under such order.....	194
Petition to sell slaves for distribution of.....	195
Order for hearing such petition.....	196
Petition to sell personal property, other than slaves, for distri- bution of, (note).....	198
Statement of representative for final settlement and distribu- tion of,.....	199

Order setting day to make final settlement of.....	206
Decree upon account for final settlement of.....	208
Commission to distribute personal property of.....	213
Report of commissioners as to distribution of.....	214
Order confirming report.....	215
Order for distribution of, final settlement of, having been previously made.....	217
Report of insolvency of.....	219
Oath to claim against.....	225

## EVIDENCE—

Subpœna .....	34
Commission to take .....	34
General rules as to, (note).....	35
Form of deposition.....	35, 36
Directions as to taking deposition, (note).....	37

## EXEMPTION—

Petition of widow or child to have certain lands set off for family use and exempted from sale.....	150
Order to hear such petition.....	152
Order granting such petition.....	153
Report in compliance with such order.....	155
Estimate of the value of land thus exempted.....	156
Order that representative convey.....	156

## EXECUTION—

For amount found due from representative on statement of his accounts after his removal.....	173
Endorsement to be made on, when issued by magistrate and to be executed in another county.....	302

## EXECUTOR—

Citation to former, to show cause why letters should not also be granted to one whose disability has been removed....	45
Order joining, with petitioner.....	46
Ordinary petition for letters to.....	47
Bond of.....	49
Petition for letters to, when will exempts from bond.....	53
Appointment of, without bond.....	54
Notice of his appointment to be published by.....	55
Order to show cause on failure to file inventory.....	55
Order to attach or remove in such case.....	56, 57
Petition for authority to keep the estate together.....	90
Order granting such petition.....	91
Petition by, to sell lands to pay debts, (note 3).....	115
Petition that he may give additional security.....	159
Order appointing administrator after removal of.....	167
Petition to revoke his letters on his removal from the State.	168
Order to hear such petition.....	168

Order for removal of.....	169
Statement of account by Judge, on failure of, after removal.....	170
Final order passing such account.....	172
Answer of, on being required to file the accounts of his testator as to a prior administration.....	179
Order setting day to settle such account.....	180
Final order on such account.....	182
Order by the Court that he file his accounts.....	185
Order to attach for failure to file an account.....	186
Process of attachment in such case.....	187
Statement of, for settlement and distribution.....	199
Nothing allowed to, for special and extraordinary services unless, &c., (note).....	201
Order setting day to make final settlement of accounts of,..	206
Order to settle when estate is declared insolvent.....	222
Petition for deed from, as to land agreed to be conveyed by deceased, (see note p. 270).....	268
Answer of, to such petition.....	270
Order that he convey, (note p. 272).....	271

#### FEEs—

Petition of general administrator for an allowance of, out of bond given him.....	86
Order setting day to hear such petition.....	87
Order granting such petition.....	88
No extra fees or compensation allowed unless, &c., (note).....	201

FILING—Notice of, as to interrogatories to witnesses....	37
--	----

FORMS—Nuncupative will.....	26
-----------------------------	----

#### GARNISHMENT—

For the collection of taxes when in danger of loss.....	294
Judgment on such garnishment.....	295

#### GENERAL ADMINISTRATOR—

Appointment of,.....	239
Petition of, as to an estate not administered upon.....	70
Grant of letters to, upon his petition, or by the Court.....	71
Petition of third person, to have administration cast upon...	71
Order committing administration to, upon petition of third person.....	72
Petition for letters to, for a single purpose.....	73
Order granting such letters to.....	74
Bond to, when administration is cast upon him on petition of third person.....	75
Petition of, for fees and allowances to be paid him out of bond given him.....	86
Order setting day to hear such petition.....	87
Order granting such petition.....	88
Order removing.....	239



## GUARDIAN—AD LITEM.

Appointment of,.....	29
As to appointment of, on proceeding to invest money of an estate.....	95
Order appointing, upon petition to sell land to pay debts or for a division.....	120
As to, upon hearing petition for guardianship of property of non-resident lunatic, (note).....	248
Appointment of, on petition to sell land for division among joint owners, (note).....	284

## GUARDIANSHIP—

Petition for letters of, as to declared lunatic.....	244
Order granting letters of, in such case.....	245
Petition for letters of, as to non-resident lunatic, &c.....	246
Order to hear such petition.....	247
Order granting such guardianship, on proof, &c.....	248
Petition for, as to non-resident infant.....	249
Order granting such petition.....	250
Petition for general letters of,.....	250
Appointment to, upon nomination of minor, (note).....	251
Nomination of his guardian by minor.....	252
Entry when such nomination is certified to Judge.....	253
Letters of,.....	253
Petition of guardian to sell lands of ward, to re-invest or loan at interest, (note).....	254
Petition of guardian of lunatic, &c., to sell realty rather than personal property, to pay debts, and for maintenance, (see note p. 254).....	255
Petition of guardian to invest money of minor in real or personal estate, (note p. 254).....	256
Petition by guardian to invest accumulations of money, (see note p. 254).....	258
Petition by guardian to sell property for maintenance and education.....	259
Petition by guardian for leave to remove person and property of ward to another State.....	260
Order granting such petition.....	261
Petition to remove property when both guardian and ward are non-residents.....	262
Order on such petition.....	263
Petition by security in bond of guardian for his discharge, (see note).....	265
Consent to marriage of ward by guardian.....	304

## HEARING—

Petition to compel production of will.....	18
Day of, as to probate of will.....	27

**HEIR—**

Petition of widow or child to have certain lands set off for the use of the family.....	150
Order to hear such petition.....	152
Order granting such petition.....	153
Report of representative, showing compliance with such order.....	155
Estimate of the value of such lands by appraisers.....	156
Order that representative convey such land to widow and children.....	156
Form of deed in such case.....	167
Petition of, that he may receive distribution of a portion of his inheritance.....	191
Order of hearing on such petition.....	192
Order as to distribution to, (note).....	194
Refunding bond under such order.....	194
Assignment of dower by,.....	266
Declaration adopting and legitimating, so as to make child capable as an heir.....	292

**HOMESTEAD—**For proceeding to obtain, by widow and children, see pages.....150 to 158

**IDIOT—**See Unsound Mind.

**IMPRISONMENT—**

Order for, on refusing to produce will.....	19
Attachment for, in such case.....	20
Discharge from, in such case.....	21

**INFANT—**See Minors.

**INQUISITION—**

Petition for, as to lunacy.....	240
Order setting day for hearing such petition.....	241
Venire for jury to make,.....	242
Writ requiring the person to be present at the trial.....	242
Decree on verdict of jury upon,.....	243
Writ to summon jury to make, as to damages, on petition to erect dam, &c.....	312
Verdict of such jury.....	313

**INSANITY—**See Unsound Mind.

**INSOLVENCY—**

Suggestion of death, or marriage of creditor in such proceeding, (note).....	64
Order when Judge is interested in claims or related to creditors.....	218
Notice of hearing to be published and posted.....	221

Notice to creditors, (note).....	221
Report of,.....	219
Order to hear report of,.....	220
Decree of, and fixing day for settlement.....	222
Notice of settlement of prior administration after declaration of,.....	223
Decree upon the account filed and continuing same administrator.....	223
Oath to claims against estate in case of,.....	225
Objections to claims.....	226
Issue to try such objections, (note).....	227
Order to cite administrator to make distribution in case of, ..	227
Petition for day to settle estate in case of,.....	228
Order setting day to hear such petition.....	229
Order passing the account, and determining as to objections to claims, &c.....	230
Report of accountant as to amount to be divided on claims..	236
Order that dividend be paid creditor, &c.....	237
INTERROGATORIES—	
Notice of filing of, to take testimony.....	37
(See erratum as to such notice.)	
INTEREST—	
Entry as to, when Judge has,.....	218
Petition by guardian to sell lands to loan at, (note).....	254
INVESTMENT—	
Petition to make, of accumulations of an estate.....	92
Order for day of hearing.....	94
Order authorizing,.....	95
Report of representative showing,.....	96
Report of order to be recorded.....	97
Petition of guardian to sell land to loan or make, (note)....	254
Petition of guardian to make, of money of minor in real or personal estate, (note p. 254).....	256
Petition of guardian to make, when money accumulates, (note p. 254.).....	258
INVENTORY—	
Filing of, and entry upon the minutes.....	51
Filing supplemental, and entry.....	52
Order for, &c., when same is not filed within the proper time	55
Order to attach or to remove in such case and on failure to show cause.....	56
Order removing representative for failure to file.....	57
Answer against attachment or removal in such case and asking further time.....	57
Further time to return, granted.....	58
Affidavit to,.....	58



Order to cite representative on hearing of such petition....	133
Order ascertaining dower in such proceeds.....	134
Petition to convey, purchase money being paid.....	136
Order that conveyance of, be made to purchaser.....	136
Petition by purchaser of, for deed, when the representative fails to act.....	138
The same, when representative fails or refuses to comply with an order of Court.....	139
Order requiring representative to show cause why he should not convey, or be attached.....	140
Deed for, by representative.....	141
Acknowledgment of deed for, by representative.....	142
Probate of deed when attested by two witnesses.....	143
Petition of purchaser to have number of, corrected.....	148
Order correcting such mistake.....	149
Petition of the widow or child to have, set off for family use	150
Order exempting \$500 worth of, for the use of the widow and children.....	153
Report of representative showing that he has set off, for the use of widow and children.....	155
Estimate of the value of such land by the appraisers.....	156
Ordering conveyance of such.....	156
Petition by guardian to sell, for re-investment or to loan at interest, (see note).....	254
Petition to sell land rather than the personalty of lunatics, &c., to pay debts or for maintenance, (note p. 254).....	255
Petition of guardian for leave to invest money of minor in real or personal estate, (note p. 254).....	256
Petition that representative be compelled to convey, so as to perfect title to,.....	268
Order thereon, (see note).....	269
Answer thereto by representative.....	270
Order that representative convey, (see note p. 272).....	271
Petition for partition of, between adult joint owners.....	272
Commissioners nominated to make partition of,.....	274
Confirmation of appointment of such commissioners.....	276
Order to record proceedings as to partition of,.....	279
Petition to sell, when same cannot be equitably divided....	280
Order to hear such petition.....	282
Decree of sale in such case.....	285
Form of commission in such case.....	286
Commissioners' report of sale in such case.....	288
Confirmation of such sale.....	289
LEGACY—	
Petition of legatee that he may have,.....	190
Order of hearing on such petition.....	192
Order that legacy be satisfied.....	193
Refunding bond under such order.....	194

**LEGATEE—**

Petition that he may have his legacy.....	190
Order of hearing on such petition.....	192
Order that legatee be paid his legacy.....	193
Refunding bond under such order.....	194

**LEGITIMATING—Declaration adopting child, &c.....** 292**LETTERS—Testamentary, &c.**

Order to cite prior representative to show cause why, should not be granted to executor on removal of disability.....	45
Order for, joining petitioner with the former representative..	46
Ordinary petition for, testamentary.....	47
Ordinary decree granting, testamentary.....	48
Petition for, testamentary where will dispenses with bond..	53
Grant of letters in such case.....	54
Revoked for failure to file inventory in proper time.....	56, 57
Of administration, to the general administrator upon his petition, or by the Court of its own motion.....	71
Petition for, to general administrator for a single purpose...	73
Petition for special, of administration.....	76
Grant of special,.....	77
Of administration, order granting.....	79
Petition to revoke, on removal of representative from the State.....	168
Revocation of, for failure to file accounts.....	185
Of guardianship.....	253

**LICENSE—Affidavit in lieu of, as to sale of slave by auctioneer, broker or agent.....** 302

Application for retail,.....	303
Affidavit required to obtain retail,.....	303
Form of, to carry on any business.....	304
Consent for marriage,.....	304, 305
Bond required before issuance of marriage,.....	305
Marriage,.....	306
Certificate of marriage to be endorsed on,.....	306
Warrant, for a violation of license laws.....	316

**LUNACY—See Unsound Mind.****MAINTENANCE—**

Petition of guardian to sell land rather than personalty of lunatics, &c. for, and to pay debts, (and note p. 254).....	255
Petition by guardian to sell property for, &c.....	259

**MARRIAGE—**

Suggestion of,.....	64
Consent to, by parent or guardian.....	304
Proof of such consent.....	305

Bond on issuing license for .....	305
License for .....	306
Certificate of .....	306
Ceremony of .....	306
<b>MILL—</b>	
Petition to erect, and dam on a non-navigable stream .....	311
Writ to summon jury to make inquest of damages in such case .....	312
Verdict of such jury .....	313
Order granting such petition .....	314
<b>MINORS—</b>	
Orders appointing guardian ad litem for ...29, 95, 120, 248, 284	
Petition for guardianship of property of, when non-resident. ....	249
Appointment of such guardian .....	250
Petition for general letters of guardianship of, .....	250
Appointment of guardian upon nomination of, (and note) ...	251
Certificate of minor's nomination of a guardian .....	252
Entry upon such certificate .....	253
Letters of guardianship of, .....	253
Petition to sell lands of, to re-invest, or loan at interest, (see note) .....	254
Petition of guardian to invest money of minor in real or per- sonal estate, (note p. 254) .....	256
Petition by guardian to remove person and property to ano- ther state .....	260
Order granting such petition .....	261
Petition to remove property when both guardian and minor are non-residents .....	262
Decree in such case .....	263
Petition to sell land when same can not be equitably divided, and when, are interested .....	280
Consent to marriage of, by parent or guardian .....	304
<b>MISTAKE—</b>	
Petition to amend record nunc pro tunc, as to name .....	143
Order for hearing such petition .....	145
Citation on such order .....	146
Order making amendment .....	146
Petition to correct, as to number of land .....	148
Order correcting such .....	149
<b>MONEY—</b>	
For investment of accumulations of .....	92
Order to hear petition to invest .....	94
Order authorizing such investment .....	95
As to use of, by representative, (note) .....	200
Schedule showing amount of, paid to distributees .....	205
“ “ “ used by representative .....	206
Petition of guardian to invest, (and note 254) .....	256
Another form, (and note 254) .....	258

## NEWSPAPER—

Order as to notice when none published in county, on petition to sell slaves to pay debts, (note).....	112
--	-----

## NOMINATION—

Of guardian by minors over fourteen, (and note).....	251
Of guardian by such minor.....	252
Entry by the Court upon certificate of such.....	253
By Judge, of commissioners to make partition of land.....	274

## NON-RESIDENT—

Petition for guardianship of property of lunatic who is,....	246
Order to hear such petition.....	247
Order granting such guardianship, on proof, &c.....	248
Petition for guardianship of property of non-resident infant.	249
Appointment of guardian for,.....	250
Petition to remove property when both guardian and ward are,.....	262
Order on such petition.....	263

## NOTARY—

Certificate of Judge as to office of.....	301
---	-----

## NOTICE—

What required upon the probate of will, (note).....	28
Of the filing of interrogatories.....	37
Of appointment by executors and administrators.....	55
Order for, to administrator in chief on settlement by special administrator.....	84
Of day of hearing petition to compromise.....	100
Of sale of perishable property, (note).....	102
Order as to, when no paper published in the county on application to sell slaves to pay debts, (note).....	112
Form of, to be posted or published.....	112
Of hearing application to sell lands.....	119
(As to length of notice by citation, see errata.)	
Proof of.....	123, 124
Form of, for sales of land by representative.....	123
Of hearing as to confirmation of sale of land, (note 127) 126, 127	
Of hearing petition against representative for additional security, (note).....	160
Upon statement of account of representative by Judge.....	172
On settlement by an administrator of deceased representative	181
Of partial settlement, (note).....	188
Of application to sell slaves for distribution.....	197
Of day set for final settlement.....	207
Of day to hear report of insolvency, to be published and posted.....	221
To creditors, (note).....	221



Of settlement of prior administration, for publication and posting, after declaration of insolvency.....	223
For publication by Judge on application for partition of land, (note).....	274
Of day to hear petition to sell land, filed upon the ground that land cannot be equitably divided.....	283
Of sale by commissioners, when land is sold upon the ground that it cannot be equitably divided among joint owners...	287
Of limited partnership to be published.....	298
Of hearing petition to emancipate slave, (note).....	308
To party whose property may be injured to show cause why petitioner should not have leave to erect his dam, &c.....	314
<b>NUNCUPATIVE—</b>	
Petition to probate such will.....	24
Form of such will.....	26
Form of certificate endorsed as to probate of, No. 15, (and see note).....	33
<b>OATH—</b>	
To claim against an insolvent estate.....	225
To be administered to all officers .....	298
<b>OBJECTION—</b>	
To claims against an insolvent estate, (note).....	226
Decree as to, &c.,.....	230
<b>OFFICE—</b>	
Oath of, to be administered to all officers.....	298
Form of official bonds.....	299
Petition by surety to be discharged from such bond.....	300
Citation under such petition.....	301
Certificate of Judge as to official character of Justices, Notaries, &c.....	301
<b>ORDER—</b>	
Setting day to hear petition to compel production of will, &c.	18
For an attachment to compel production of will.....	19
Of discharge in such case.....	21
Setting day for probate of will.....	27
Appointing guardian ad litem.....	29, 95, 120, 248, 284
Directing an issue to try validity of will.....	31
On filing renunciation of executor.....	38
Final, admitting will to probate.....	41
Annexing will to administration on failure of executor to apply .....	43
To cite previous representative to show cause why executor, whose disability has been removed, should not have letters	45
Joining prior representative with petitioner.....	46

Ordinary, granting letters testamentary.....	48
Setting aside first, and appointing new appraisers.....	50
That an inventory be returned or that representative show cause, &c.....	55
To attach or to remove for failure in such case.....	56
Granting further time to return inventory.....	59
Setting day to hear widows' petition for dower.....	63
Committing administration to general administrator upon pe- tition of third person.....	72
Granting administration for a single purpose to the general administrator.....	74
Setting day for settlement of special administrator with ad- ministrator in chief.....	84
Setting day to hear petition of general administrator to be paid his fees, &c., by his bondsmen.....	87
Granting such petition.....	88
Setting day to hear petition for investment of accumulations of an estate.....	94
Authorizing such investment.....	95
Granting leave to compromise.....	100
For sale of property liable to waste.....	102
To record the account of such sale.....	104
To authorize private sale of crop.....	105
For sale of personal property, other than slaves, to pay debts.....	108
Changing place of sale of personal property.....	109
Setting day of hearing of petition to sell slaves to pay debts	111
Authorizing such sale.....	112
Of confirmation of sale of land on hearing proof, the report being adverse to sale.....	127
Ascertaining dower in proceeds of land sold by representa- tive.....	134
That conveyance be made to purchaser of land.....	136
Setting day to hear petition to amend record nunc pro tunc.	145
Citation on such order.....	146
Making amendment.....	146
“ “ as to mistake in number of the land sold	149
That land worth \$500 be set off for use of the widow and children, and exempted from sale.....	153
That the action of representative in setting off such land be confirmed, and that he convey.....	156
Setting day to hear petition that representative be required to give additional security.....	160
Approving additional bond filed on petition to, but before any order of Court.....	161
Requiring an additional bond.....	162
By the Court, of its own motion, requiring additional security	163

Setting day to hear petition of surety of representative for his discharge from the bond.....	165
Requiring new bond on application of the surety in the first	165
Removing representative on failure to give new or additional bond as required by prior order.....	166
Appointing successor, on removal of former administrator...	167
To hear petition for revocation of letters when representative removes from the State.....	168
Removing representative.....	169
Stating and passing account, by Judge against representative whose authority has ceased.....	172
To hear petition requiring representative of deceased representative to account and to cite sureties.....	178
Setting day to make such settlement.....	180
Final, upon account against the deceased representative....	182
Revoking letters on failure to file accounts.....	185
For an attachment to compel settlement.....	186
Setting day for partial settlement.....	188
Passing an annual or partial account.....	189
Setting day to hear petition of legatee or heir, for legacy, or for distribution.....	192
That a legacy be satisfied.....	193
Setting day to hear petition to sell slaves for distribution...	196
Setting day to make final settlement, &c.....	206
Upon account for final settlement.....	208
Confirming distribution as made by commissioners.....	215
To sell property according to report of commissioners appointed to divide.....	216
For distribution after final settlement.....	217
To hear report of insolvency.....	220
Declaring insolvency, and appointing day for representative to settle.....	222
Passing the account of former administration after declaration of insolvency and continuing same administrator....	223
To cite administrator to make distribution of insolvent estate	227
Fixing day to settle the accounts of an insolvent estate, to pass upon the claims of creditors and to make distribution	229
Passing account of an administrator of insolvent estate, determining issues as to claims, and referring the question of pro rata due upon claims to accountant.....	230.
Ascertaining the amount due each creditor, &c.....	237
Appointing administrator-general.....	239
Removing " ".....	239
Setting day to hear petition for inquisition of lunacy, directing for jury, &c.....	241
Upon verdict of lunacy, &c.....	242
Granting guardianship in such case.....	245

For hearing petition for guardianship of property on non-resident lunatic .....	247
Granting guardianship of non-resident lunatic, on proof, &c..	248
Appointing such guardian .....	250
Appointing guardian nominated by minor, (and note) .....	251
On petition of guardian to sell land, (see note) .....	254
Granting petition to remove person and property of ward from the State .....	261
Authorizing non-resident guardian of non-resident ward to remove property to State of their residence .....	263
For day to hear petition that a representative be compelled to convey according to written agreement of deceased ....	269
That a representative convey, (note 272) .....	271
Confirming appointment of commissioners to partition land among joint owners .....	276
To record proceedings as to partition of land .....	279
Setting day to hear petition to sell land upon the ground that it cannot be equitably divided .....	282
That land be sold for division among joint owners, when it appears that it cannot be equitably divided .....	285
Confirming such sale, &c. ....	289
Order of Court binding out minor as apprentice .....	291
Emancipating slave .....	309
To sheriff to deliver runaway to owner .....	311
Granting application to erect dam or mill, &c. ....	314

#### PARTITION—

Petition for, of land .....	272
Nomination of commissioners to make .....	274
Confirming such nomination .....	276
Return of such commissioners .....	277
Order to record proceedings as to .....	279
Petition to sell land for, when it cannot be equitably divided,	280
Order to hear such petition .....	282
Decree of sale, &c. in such case .....	285
Form of commission in such case .....	286
Report of sale by commissioners in such case .....	288

#### PARTNERSHIP—

Limited, how formed .....	296
• Notice of limited for publication .....	298

#### PETITION—

To compel production of will .....	17
Order as to hearing thereof .....	18
Order to attach party failing to produce will, &c. ....	19
For the probate of a will .....	22
Another form under Code § 1830 .....	23
For the probate of nuncupative will .....	24

Order setting day to hear.....	27
For an issue to contest will.....	30
To probate will discovered after administration commenced..	39
For letters on will, former disability having been removed, the estate having been partially administered by another.	44
Ordinary, for letters testamentary.....	47
For letters testamentary where will dispenses with bond....	53
Of widow for her dower.....	61
Of general administrator, as to an estate not administered upon.....	70
Of third person, to have administration cast upon general ad- ministrator.....	71
For letters to general administrator for a single purpose....	73
For special letters of administration.....	76
For settlement of accounts by a special administrator, (see note).....	81
Of general administrator for fees and allowance to be paid by the security given him.....	86
By representative for leave to keep the estate together.....	90
To invest accumulations of an estate, (see page 115).....	92
For leave to compromise claim.....	98
To sell property as perishable or wasting.....	100
To sell crop at private sale.....	105
To sell personal property, other than negroes to pay debts..	107
To change a prior order as to the place of sale of personal property.....	108
To sell slaves for the payment of debts.....	110
Order setting day to hear said petition.....	111
To sell lands to pay debts.....	114
“ “ “ for a division of the estate.....	116
“ “ “ “ “ “ “ “ when there is a will,.....	117
Order to hear petition to sell lands.....	118
(As to length of notice of such hearing, see errata.)	
Of widow, that an equivalent for her dower be allowed her out of the proceeds of sale.....	132
Of purchaser, for deed, when representative fails to act....	138
Of the same, when representative refuses or fails to comply with an order of Court.....	139
To amend record nunc pro tunc, as to name.....	143
Citation upon such petition, (note).....	146
To correct mistake as to number of land, ordered to be sold.	147
Order on such.....	
Of widow or child to have land of the value of \$500, set o' for the use of the family.....	
Order fixing day for hearing of.....	
That representative be required to give additional c	

To revoke letters upon removal from State by representative,	168
Order setting day to hear such petition.....	168
Of administration de bonis non that the representative of the deceased representative may be compelled to account.....	174
Order to hear such petition.....	178
Of legatee that he may have his legacy.....	190
Of heir that he may receive distribution of a portion of his in- heritance.....	191
By surety to be discharged from bond of representative....	164
To sell slaves for distribution.....	195
To sell personal property, other than slaves for distribution, (see note).....	198
Of administration to set day to make settlement and distri- bution of an insolvent estate.....	228
For an inquisition of lunacy.....	240
For guardianship of a declared lunatic, &c.....	244
For guardianship when lunatic, &c. is non-resident.....	246
For guardianship of non-resident infant.....	249
For general guardianship.....	250
By guardian to sell land for re-investment of proceeds or loaning at interest.....	254
Of guardian of person of unsound mind, to sell the real rath- er than personal property, to pay debts and for mainten- ance, (see note p. 254).....	255
Of guardian to invest money of minor in real or personal estate, (note p. 254).....	256
By guardian to invest accumulations of money, (note p. 254)	258
By guardian to sell property to maintain and educate.....	259
By guardian for leave to remove persons and property to an- other State.....	260
By same to remove property out of the State where both guardian and ward are non-residents.....	262
Petition of surety in bond of guardian to be discharged from further liability, (see note).....	265
For conveyance of land by representative, deceased having agreed to convey in writing, and died without carrying it into effect.....	268
Order thereon, (note).....	269
“ “ (note p. 272).....	271
For partition of land.....	272
To sell land where it cannot be equitably divided.....	280
Order thereon.....	282
By surety in an official bond to be discharged.....	300
For emancipation of slave.....	308
To erect dam and mill on a non-navigable stream.....	311
POOR—Articles of apprenticeship by Judge for children of,	290

<b>PRESUMPTION</b> —What, when will is probated on foreign record, (note).....	28
<b>PROCESS</b> —Attachment for contempt of,.....	20
<b>PROBATE</b> —	
Petition for, of will.....	22
Same, under Code § 1630.....	23
Petition for, as to nuncupative will.....	24
Order for day of hearing as to,.....	27
As to notice of, to next of kin, (note).....	28
As to publication (note).....	28
Ordinary form of proof.....	32
Petition to, will discovered after administration commenced..	39
Final order for, as to will.....	41
Of deed, when attested by two witnesses.....	143
<b>PROOF</b> —	
What, required as to will probated on copy, (note).....	28
Ordinary proof as to will.....	32
What, to be recorded on probate of will (note).....	33
Of notice or publication.....	123, 124
Setting day to take, touching confirmation of sale when report is adverse to sale.....	126
Of deed, when attested by two witnesses.....	143
Of ownership to obtain slave committed as runaway.....	310
<b>PROPERTY</b> —	
Petition to sell, as perishable or wasting.....	101
Order for such sale.....	102
Report of sale under such order.....	103
Petition to sell crop at private sale.....	105
Petition to sell personal, other than negroes, to pay debts..	107
Order for such sale.....	108
Personal, petition to change place of sale of.....	108
Order granting such petition.....	109
Personal, other than slaves, petition to sell, (see note).....	198
Schedule of, annexed to statement for final settlement.....	203
Commission to distribute personal, of estate.....	213
Confirmation as to distribution of.....	215
Order to sell according to report of commissioners.....	216
Petition for guardianship of the property of a non-resident lunatic.....	246
Petition for guardianship of, when belonging to non-resident infant.....	249
Petition by guardian to sell, for maintenance and education..	259
Petition by same to remove person and property to another State.....	260
Order granting such petition.....	261

Petition for removal of, when both guardian and ward are non-residents.....	262
Order on such petition.....	263

### PUBLICATION—

When necessary upon probate of will, (note).....	28
Of notice of appointment by executors and administrators..	55
Of day of hearing petition for leave to compromise debt or claim as bad or doubtful.....	100
As to what requisite, on sale of property as perishable, (note)	102
On petition to sell slaves to pay debts.....	112
Form of, to sell lands to pay debts, or division.....	119
Proof of.....	123, 124
When representative resides out of the State, and petition is filed, praying an additional bond, (note).....	160
Upon statement of account of representative by Judge....	170
On settlement by an administrator of a deceased representative.....	181
For partial settlement, (note).....	188
Upon petition to sell slaves for distribution.....	197
Of day set for final settlement.....	207
Of day to hear report of insolvency.....	221
As to settlement of administration in chief after declaration of insolvency.....	223
By Judge upon petition for partition of land, (note).....	274
Upon petition to sell land for division among joint owners..	283
By commissioners, of sale in such case.....	287
Of notice of limited partnership.....	298
Of notice of day of hearing petition to emancipate slave, (note).....	308

### RECORD—

Of dissent of widow from will.....	61
Of proceedings in dower.....	68
Of report of representative as to investment of money.....	97
Of report of sale of perishable property.....	104
Order to make a, of report of private sale of crop.....	106
Petition to amend, as to name, nunc pro tunc.....	143
Order setting day to hear such petition.....	145
Citation on such order, (note).....	146
Order making amendment.....	146
Petition to correct mistake as to number in description of land ordered to be sold.....	148
Entry of, when Judge has been of counsel in the matter...	218

### REMOVAL—

Order to representative to show cause why he should not be removed for failure to file an inventory.....	55
Order to remove representative on failure to file inventory, or to show cause in such case.....	56, 57



Answer against, and asking time.....	57
Order of, when representative fails to give new or additional bond when required.....	166
Petition for, of representative on his leaving the State.....	168
Order to hear such petition.....	168
Order of, as to representative.....	169
Judge's decree, stating accounts of representative when he fails after removal.....	170
Passing such account.....	172
Of representative or guardian for failure to file accounts....	185
Order of, as to administrator-general.....	239
Petition by guardian for, of person and property to another State.....	260
Order granting such petition.....	261
Petition for, of property when both guardian and ward are non-residents.....	262
Order on such petition.....	263

## REPORT—

Of representative, showing an investment of money.....	96
Order to make a record of,.....	97
Of private sale of crop.....	106
Order to record same.....	106
As to form of, as to sale of negroes to pay debts (note)....	113
Of sale of land.....	124
Of such sale when purchase money paid, or prayer to set sale aside, (note).....	125
Being adverse, setting day to hear proof touching confirma- tion of sale.....	126
Confirmation of sale in accordance with,.....	130
By representative showing full payment of purchase, mo- ney and asking leave to convey.....	136
Of representative showing that he has set off land for the widow and children.....	155
Confirming, and ordering conveyance.....	156
Of commissioners as to distribution of an estate.....	214
Order confirming such.....	215
Order to sell under report of commissioners.....	216
Of insolvency.....	219
Setting day to hear such.....	220
Of accountant to whom is referred the matter of dividend upon claims against an insolvent estate.....	236
Of commissioners to partition land.....	277
By commissioners appointed to sell land when same cannot be equitably divided among joint owners.....	288

## RENUNCIATION—

By executor named in will.....	38
To be attested if executor not present, (note).....	38

Order on filing of.....	38
Petition for letters upon a will when one executor renounces	53
Grant of letters in such case.....	54
Of right to administer.....	79
<b>RETURN</b> —Sheriffs' on writ for the summons of dower commissioners.....	67
Of dower commissioners.....	68
Of commissioners appointed to make partition of land.....	277
Of sheriff, to writ for jury to inquire as to damages, on peti- tion to erect a dam, &c.....	312
<b>SALE</b> —	
Petition for, as to perishable property.....	101
Report of the account of such sale.....	103
Order to record same.....	104
Petition to sell crop at private sale.....	105
Order granting such petition.....	105
Report of such sale.....	106
Order to record such report.....	106
Petition to make, of personal property, other than negroes, to pay debts.....	107
Order for such sale.....	108
Petition to have place of sale changed as to personal prop- erty.....	108
Order granting such petition.....	109
Petition to sell slaves to pay debts.....	110
Order for hearing petition.....	111
Order authorizing such.....	112
As to form of report of such, (note).....	113
Petition to sell lands to pay debts.....	114
Petition to sell lands instead of slaves to pay debts, (note 1, 2,).....	114, 115
Petition to sell where there is a will (note 3).....	115
Petition to sell land for division.....	116
Petition to sell land for division when there is a will.....	117
(As to length of notice of hearing such petition, see errata.)	
Decree of sale of land to pay debts, or for division.....	121
Notice of, by representative.....	123
Proof of, notice of,.....	123, 124
Report of,.....	124
Report of, when purchase money is paid, or prayer to set sale sale aside, (note).....	125
Order confirming, on hearing proof when report is adverse to	127
Confirmation of, report being favorable.....	130
Consent by widow to sale of her dower.....	131
Order for such sale, (note).....	132
Petition for allowance of dower out of the proceeds of.....	132

Petition by purchaser of land for deed when the representative fails to act .....	138
Like petition when representative fails or refuses to comply with the order of Court.....	139
Deed for land by representative.....	141
Petition to sell slaves for distribution.....	195
Order for hearing such petition.....	196
Petition to sell personal property, other than slaves, for distribution, (and see note).....	198
Order to sell according to report of commissioners appointed to divide.....	216
Petition by guardian to sell land to re-invest or loan at interest, (note).....	254
Petition by guardian to sell the realty rather than the personalty to pay debts, and for maintenance, (and note p. 254).....	255
Petition by guardian, to sell to maintain and educate.....	259
Petition to sell land when held jointly and can not be equitably divided.....	280
Decree of, upon such petition.....	285
Notice of, in such case.....	287
Report of, in such case, by commissioners.....	288
Confirmation of, in such case.....	289
Affidavit as to, of slave by an auctioneer, broker or agent...	302

#### SECURITY—

Petition that representative be required to give additional..	159
Order to hear such petition, (note).....	160
Order approving additional bond.....	161
Order requiring “ “ .....	162
Order requiring additional bond, made by the Court and without petition.....	163
Petition by, to be discharged from bond of representative...	164
Order fixing day to hear such petition.....	165
Order requiring new bond.....	165
Order removing representative on his failure to give a new or an additional bond.....	166
Order to cite sureties of a deceased representative on settlement of his account.....	178
Petition for discharge by, from bond, (see note).....	265
Bond of officers.....	299
Petition, for a discharge from.....	300

#### SETTLEMENT—

Petition for, by special administrator.....	81
Account of such administrator for.....	83
Order setting day for, and that administrator in chief have notice, &c.....	84
Decree on final, of special administrator.....	84

Petition of administrator de bonis non that the representative of deceased representative account.....	174
Order for hearing such petition.....	178
Answer to such petition.....	179
Order fixing day to make such.....	180
Final order on such an account.....	182
Order by the Court that representative be cited to file his accounts, (note).....	185
Revocation of letters for failure to make.....	185
Order for an attachment to compel.....	186
Order setting day for partial.....	188
Order upon partial or annual.....	189
Statement of representative for.....	199
Form of account and schedules for,.....202, 203, 205,	206
Order setting day to make final.....	206
Decree upon an account for final.....	208
Order for distribution after final settlement previously made	217
Order that representative settle upon decree of insolvency..	222
Form of notice of, as to prior administration after estate declared insolvent.....	223
Petition by administrator for day to make, of insolvent estate	228
Order upon such petition.....	229

#### SLAVES—

Petition to sell, to pay debts.....	110
Setting day for hearing same.....	111
Order authorizing such sale.....	112
Petition to sell lands, instead of slaves, to pay debts, (note 1, 2,).....	114, 115
Petition to sell slaves for distribution.....	195
Order for hearing such petition.....	196
Petition to sell personal property, other than slaves, for distribution, (and see note).....	198
Affidavit as to the sale of, by auctioneer, broker or agent...	302
Petition for emancipation of,.....	308
Order emancipating.....	309
Proof to obtain possession of, when runaway.....	310
Order to deliver, to owner upon such proof being made.....	311

#### SPECIAL ADMINISTRATION—

Petition for.....	76
Grant of.....	77
Petition by administrator for settlement of, (see note).....	81
Account of, for settlement.....	83
Order setting day for settlement of, .....	84
Decree and judgment on settlement of,.....	84

**STATEMENT—**

Of representative for settlement.....	199
And schedules.....	202, 203, 205, 206

**SUBPŒNA—**

For witnesses.....	34
--------------------	----

**SUMMONS—**

Of dower commissioners.....	66
Sheriff's return thereon.....	67
See Writ.	

**SURETY—See Security.****TAXES—**

Garnishment for collection of, when in danger of being lost..	294
Judgment on such garnishment.....	295
Certificate of Judge to tax book for tax collector.....	310

**TESTAMENTARY—**

Petition for letters, former disability being removed, and the estate being in course of administration, by another.....	44
--	----

**TESTIMONY—**

Commission to take.....	34
General rules as to, (note).....	35
Form of, and directions as to taking deposition, (note 37) 35, 36	
Setting day to take, touching confirmation of sale, when report is adverse to sale.....	126
Confirmation of such sale on hearing.....	127

**TITLE—**

Petition that representative be compelled to perfect.....	268
Order on such petition, (note).....	269
Answer of representative to such petition.....	270
Order that representative convey, (and note p. 272).....	271

**TRIAL—**

Issue for, as to claims against an insolvent estate, (and note)	227
Order for trial of lunacy.....	241
Venire in such case.....	242
Writ to bring person of lunatic, &c., for.....	242

**UNSOUND MIND—**

As to appointment of guardian ad litem for person of.....	29
Petition for inquisition of lunacy.....	240
Order for hearing such petition.....	241
Venire for jury in such case.....	242
Writ to have the person present at the trial.....	242
Order on verdict of.....	243
Petition for guardianship when person so declared.....	244

Granting guardianship in such case.....	245
Petition for guardianship when lunatic, &c., is non-resident..	246
Order granting such guardianship on proof, &c.....	248
Letters of guardianship in case of,.....	253
Petition of guardian of person of, to sell lands to pay debts and for maintenance, (see note page 254).....	255
VERDICT—See Jury.	
WARD—See Minor and Unsound Mind.	
WARRANT—	
To arrest person violating license laws.....	316
WASTE—	
When property liable to, petition to sell.....	101
Order for such sale.....	102
Report of such sale, &c.....	103
WIDOW—	
Her dissent from will.....	60
Entry of her dissent.....	61
Petition for dower.....	61
Order setting day to hear such petition.....	63
Suggestion of marriage of.....	64
Consent to sale of her dower interest.....	131
Order for sale upon such consent.....	132
Petition for dower of, out of sale.....	132
Order to cite representative upon petition of, for dower in pro- ceeds of sale.....	133
Petition of, to have certain lands set off for the use of the family.....	150
Order fixing day for hearing such petition.....	152
Order that land worth \$500 be set off.....	153
Report of representative showing compliance with such order	155
Estimate of the value of such land by the appraisers.....	156
Order for conveyance of such land.....	156
Assignment of dower to, by heir.....	266
WILL—	
Petition to compel production of,.....	17
Order setting day to hear such petition.....	18
Order for an attachment for the non-production of,.....	19
Process of attachment in such case.....	20
On production of, or upon affidavit, order of discharge from arrest.....	21
Petition to have it proved.....	22
The same under Code § 1630.....	23
The same as to nuncupative.....	24
Form of nuncupative,.....	26

Day set to hear petition as to probate .....	27
As to notice to next of kin of the day of probate of, (note) .....	28
As to proof on probate of, upon certified record, Code § 1630, (note) .....	28
Appointment of guardian ad litem for infants, &c., for probate of, .....	29
Allegations for contest of, .....	30
Order as to issue to try validity of, .....	31
See note as to such order and errata .....	32
Ordinary form of proof of, .....	32
Witness to, may be sworn at different times, (note) .....	33
Certificate of probate to be endorsed on, (see note) .....	33
Renunciation by executor .....	38
Renunciation to be attested if the executor is not present, (note) .....	38
Order upon such renunciation .....	38
Petition to probate, discovered after administration commenced .....	39
Final order admitting, to probate, (and see note) .....	41, 42
Order when executor fails to apply for letters upon, the estate having been partially administered before will discovered .....	43
Petition for letters on, after removal of disability, the estate having been partially administered in the meantime by another .....	44
Order to cite former representative upon such petition .....	45
Order for supplementary letters, joining former representative with petitioner .....	46
Ordinary petition for letters upon, .....	47
Ordinary form of decree on such petition .....	48
Petition by executor for letters where bond is dispensed with .....	53
Grant of letters in such case .....	54
Dissent from, by widow .....	60
Entry of widow's dissent from, .....	61
WITNESS—	
To will, need not be sworn at same time, (note) .....	33
Subpœna for, .....	34
Commission to take testimony of, .....	34
WRIT—	
For dower commissioners .....	66
Sheriffs' return of such writ .....	67
To summon jury of inquest of damages on petition to erect a dam, &c. ....	312
Sheriffs' return thereon .....	312
To arrest person violating license law .....	316















